

*habentur*; so that the division will fall equal; the mother to get one half, which she has discharged, and the children the other half among them.

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1685. *March 4.* SIR JAMES STEWART *against* JOHN STEWART of ASCOG.

SIR James Stewart, as Sheriff of Bute, pursues Mr John Stewart of Ascog, advocate, for reducing his right to the crownry of Bute, and for declaring his lands free from the custom and casualty of so many oats, &c. payable to the crowner's office, formerly belonging to the surname of . The reasons were:—*1mo*, He, being a member of the Session, had bought this right while depending in a plea. *2do*, He acted and exercised the said jurisdiction before he had taken the test. Ascog denied both; but objected against his title of Sheriff, seeing both the *officium vicecomitis et coronatoris* are consistent in one place, and the one needs not interfere with the other.

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1685. *March 4.* ANENT WITNESSES TO TESTAMENTS.

THIS point was debated, if a testament was null which had only two witnesses, whereof one had a legacy left to him, and so was a party interested and concerned in the subsisting of the testament. By the Roman law it was not a sufficient objection, § 11, *Institut. de Testament. ord.* But Vinnius, in his Commentary, is not well pleased with this, and thinks it was more tolerable *jure civili*, where they had *copiam testium*, than now with us. Some thought the testament only null as to his own legacy, seeing he could not be *testis in re propria*, but valid *quoad* all the rest.

Yet, in a bond of warrandice, or relief, one of the creditors concerned in the relief may be a valid and probative witness, because he has only a consequential interest.

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1682 and 1685. The CASE of the PATIENCE and PALMTREE SHIPS.

1682. *February 14.*—The case of the two prize-sloops, called the *Patience* and *Palmtree*, of *Sunderberg*, was this day debated, the Duke of York being present. It was argued how far the Lords might review their own decreets. See the 12th Act of Parliament 1661, and *Bouritii advocatus, c. de Revisione*.

The King's Advocate had this compliment to his Royal Highness, that to

speak of marine cases before his Royal Highness, who was so expert therein, was as impertinent as Phormio's harangue to Hannibal concerning the art of war.

The Lords found these ships had carried double documents ; yet, to pay the more respect to his Majesty, they referred the whole case to him.

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1682. *November 24.*—The case of the *Patience* and *Palmtree* ships, (mentioned 14th Feb. 1682,) was this day advised, and decided against the capers, in favours of the strangers ; finding them to be free ships, and so reducing the admiral's decret which had adjudged them prizes ; and the capers are made liable *in solidum* for restitution.

Their refusing to show their documents or passes to the capers or privateers is a great presumption of an enemy's ship, and that it is unclear. Yet it is no probation, for ships may be unwilling to show their passes for fear privateers may destroy them ; yet it is a ground to bring them up, and to assoilvie the privateer from damages and expenses for so doing. But it is not a sufficient ground whereupon these ships can be adjudged.

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1685. *January 22.*—The Lords sequestrated this forenoon for advising and deciding the famous and oft debated cause of the capers of the two prize Danish ships, called the *Patience* and *Palmtree*, mentioned Nov. 7th, 1684. It was now debated, that the King's letter could not take away the strangers their decreets *absolvitor in foro*. *2do*, They argued, they were not in the case stated in the King's letter.

There arose a great dissension, if the proving that they carried either double or concealed documents, any one of them was sufficient to confiscate the ship, or if they behoved to prove both,—whether it was the *and* copulative, or the *or* disjunctive. Though some lawyers inclined to think any one of them sufficient, yet many of the Lords were for adhering to their last interlocutor, that they were free ships ; but that the capers had probable grounds to bring them up, and therefore assoilvieing them from all damages, and finding them only liable for the value as they were roused. But the Statesmen carried it, that the case should be remitted to be finally decided and determined by the King. So, if his Majesty pleases, he shall get causes enough to hear, by this his cumulative power. *Vide* another letter from the King anent these ships, 5th March 1685.

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1685. *March 5.*—There is a letter from his Majesty, anent the two ships called the *Patience* and *Palmtree*, mentioned 22d January 1685, explaining his brother's letter, and declaring them lawful prize, because of their double documents. This was procured by Sir William Bruce, then at London. And thus John Inglis, advocate, *multam operam et oleam perdidit* in this cause.

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1685. *March 6.* CALDER of MUIRTON *against* The LAIRD of BRODIE.

CALDER of Muirton having charged the Laird of Brodie on a contract, for