

1686. February.

MR. WILLIAM GORDON *against* MR. ROBERT LERMONTH OF BALCOMY.

No. 103.

In a declarator of trust the Lords allowed advocates and agents to be examined, and also women, relations within degrees to both; but allowed no ordinary witnesses.

Harcarse, No. 997. p. 225.

1686. February 12.

DOUGLAS *against* FRASER.

No. 104.

It being objected against one Douglas, brother to Tillyquilly, that he could not be admitted a witness in the proving of the tenor of a charter of the lands of Allagaven, against Sir Peter Fraser; the Lords rejected him, because he had brought over the diligence, and had been active in it, and was brother to the receiver of the disposition, who, though he had absolute warrandice, yet did not desire to lose his policy and planting, or to be put to recur on his warrandice.

Fountainhall, v. 1. p. 403.

1686. December 7.

A. *against* B.

No. 105.

The Lords found it relevant to reduce a discharge subscribed by a woman, that it was offered to be proved it was presented to her when in her child-birth pains; which the Lords judged an unseasonable time, and that she was then quasi in lecto, et vix satis mentis compos to have the full exercise of her reasonable faculties; and allowed it to be proved by women-witnesses, others not being allowed to be present *in puerperia*.

Fountainhall, v. 2. p. 434.

1686. December 8.

SMITHS *against* LADY NINEWELLS.

No. 106.

In a reduction of a disposition, as done on death-bed to the prejudice of the heir, one of the witnesses adduced by the defender, to prove that the defunct came to kirk and market, being objected against, That his mother had a legacy or debt left her by the defunct, and so he was concerned to depone for supporting the disposition, because, though the legacy was payable out of the moveables, yet they being *aliunde* exhausted, she must get payment out of the lands; the Lords first declared, That they would only admit him *cum nota*; but thereafter they *simpliciter* rejected him.

Fountainhall.

* * This case is No. 183. p. 12081. *voce* PROCESS.