

every part of the transaction at granting the bond, as well as to the signing; and I thought the lending the money upon the faith of that security strongly adminicled their testimonies. Then another question was, Whether it was not proveable by the party's oath, to which the creditor referred it,—notwithstanding a proof by witnesses had been adduced, since they were found inhabile? The Court was much divided in this. I thought it was competent, in the same way as if that proof had not been received, and in form it should not have been received, and the objection determined before hearing their testimony; but at last the suspender agreed to depone.

No. 17. 1743, June 22. SHAW *against* ISOBEL ANDERSON.

I was in the Outer-House. A relict and executrix of Lizards a farmer, pursuing a meal-maker for the price of victual furnished by her husband, which she was to prove by witnesses; the defender owned that for many years the defunct had been in use of furnishing corn, and he always paid the price when it was ground, without any writing on either side, and offered to prove payment of the victual in question by witnesses, and which in part appeared by the relict's acknowledgment,—but neither party kept books. The Commissaries found payment of money proveable only *scripto*; and two bills of advocacy were refused; but on a reclaiming bill, the Lords remitted to the Commissaries, with instructions to allow a proof by witnesses before answer. *Vide* Act of Sed. 8th June 1597.

No. 18. 1743, July 2. LORD BRACO *against* MR ADAMS.

THE question was, Whether the Dean of Faculty, Mr James Graham, and Mr Hay of Montblairy, could be admitted witnesses to prove a communing with Mr Adams concerning his claim against Lord Braco before raising the process, since they were now Lord Braco's lawyers and agent in this cause? But it carried that they could not, and we refused Lord Braco's bill reclaiming against our former interlocutor. In this question great stress was laid on their being both employed in this cause and acting in that communing for Lord Braco, and in his absence to prevent the process. For the interlocutor were President, Royston, Justice-Clerk, Minto, Drummore, Kilkerran, Dun, Leven. Arniston absent.

No. 19. 1743, July 12. HELEN RAMSAY *against* DAVID LINDSAY.

A QUESTION occurred, the very same to my apprehension as we decided the second instant, Lord Braco against Adams, (*supra*). The question was anent proving that a testament executed by a young boy in favour of his mother was explained to him so as he understood, or that it was drawn and extended at his desire. We were told that Mr James Graham, jun. and Mr Ramsay, writer, were advised about this testament, *i. e.* to extend it, during the boy's life, and when he was under the management of his mother. And that testament being now quarrelled by his nearest of kin, the mother employed Mr Graham and Mr Ramsay for her in the cause, and now adduced them as witnesses for her. But the Lords refused them; and this day on a reclaiming bill and answers adhered.