

No. 182. John Douglas, and Margaret, Jean, and Anne Arbuthnots her grandchildren, to prove the state of her judgment, and manner of executing the bonds: To which it was objected, that all these persons were related to Elizabeth Douglas, in the degrees defendant of bearing testimony in her favour; and, though they did not all stand in the same relation to Patrick Falconer, yet, as they had either got bonds themselves, or stood in that degree of relation to those that had, and these bonds were granted so near in time to each other, as that they ought to be considered as one settlement, the witnessess ought not to be received; especially considering they were not cited at first, but were now sought to be brought after the pursuer had led his proof.

Answered: The whole witnesses are nearer related to the pursuer than any of the defenders, and are proper witnesses to give account of the condition of their parent, when she was dying; the instrumentary witnesses are necessary, and will prove the reading of the papers before the servants were called in; and though the others cannot support their own bonds by their testimony, yet as the causes are different, they ought to be examined touching the other bonds, especially such as are granted to those to whom they do not stand in the defendant degree of relation.

The Lords found that the two instrumentary witnesses, Thomas Arbuthnot, and John Douglas, might be examined as to those bonds only to which they were instrumentary witnesses, and only as to what passed at signing the said bonds, and as to the circumstances of the Lady Phesdo's health at the time of signing: And found, with respect to Elizabeth Douglas, that none but the instrumentary witnesses could be examined as to the bond in her favour: And with respect to Patrick Falconer, found that such of the witnesses mentioned as had not got bonds, might be examined as to the bond in his favour, but that such of them as had got bonds, and were not instrumentary witnesses, could not be examined at all.

Act. Burnet.

Alt. Maitland.

Clerk, Kirkpatrick.

*D. Falconer, v. 2. p. 166.*

1750. July 3.

The ROYAL BANK *against* YOUNG.

No. 183.

*Socius criminis* no objection to a witness in the crime of forgery.

The Royal Bank discovered a forgery of their notes, wherein three persons were concerned, John Young, serjeant in Colonel Rich's regiment, an Irishman, who employed the other two; one of them, Parker, an Englishman, a centinel in the same regiment, formerly a schoolmaster, the greatest master of the pen that has been known, and who wrote the notes and subscriptions so dextrously, that the cashier and accountant, when upon oath, owned they could not have denied the subscriptions to be theirs, but for the paper they were wrote on, which wanted the white letters in the paper put in at the mill; the third, David Gray, a Scots

man, who made the stamp for the King's face. The man most dangerous was Parker : But as he was the person who was prevailed upon to make the discovery, it became necessary to attack Young ; and in the trial which was in this cause, as usual, *per modum simplicis querelæ*, the objection made for the pannel to Parker, when adduced as a witness, That he was *socius criminis*, was repelled ; an objection never sustained *in crimine falsi*. But when his examination was over, the pannel was allowed to put the question, Whether he had been promised a pardon ? as what might affect his credibility with the jury, and to which he deponed *negativé*.

No. 183.

*Kilkerran, No. 14. p. 602.*

1750. July 13. FALCONER of Pheedo *against* FALCONER,

In this cause, which is stated in the decision 23d June last, betwixt the same parties, No. 182. p. 16759. Patrick Falconer sought to adduce John Douglas of Tulliquholly as a witness for him, and particularly to prove the Lady's having expressed her good intentions towards him, before and after granting the bond in his favour ; and insisted he was a *habile* witness, consistent with the former interlocutor, as he neither was in the defendant degree of relation to him, nor had himself got any bond.

No. 184.

The administrator in law, of a person benefitted by certain deeds, sustained as a witness, relative to a matter connected with these deeds.

Answered : There was a bond granted to his infant daughter, to whom he was administrator in law, which was under reduction, and he called as a party to the process ; so that the same objection lay against him, as those who got bonds themselves.

The Lords, on the Lord Ordinary's report, sustained this objection ; but afterwards, on bill and answers, allowed him to be examined, on the Lady's having expressed her design of giving something to Patrick Falconer.

Act. *H. Home.*Alt. *Lockhart.*

*D. Falconer, v. 2. p. 173.*

1751. February 22. SIR DAVID CUNNINGHAM *against* SCOT.

The objection to a witness adduced by Sir David, for proving that James Scot had encroached upon Sir David's property, by ploughing and inclosing a part of Drumshorland-muir, that belonged to Sir David, That he had an interest as being tenant of the ground that lay contiguous to the alleged encroachment, and had

No. 185.

If the tenant be admitted for his master to prove the marches of his own possession ?