

1757. December 16.

ALEXANDER FAIRLY *against* WILLIAM BANNATYNE and COMPANY.**No. 194.**

Servants admitted as witnesses in behalf of their masters *ubi est penuria.*

Bannatyne and Company in **Ayr**, were in use to send yarn, in the way of trade, to the Cumberland factory at Glasgow: The yarn was delivered to Fairly a carrier, and carried by him, and sometimes by his servant Arrol, and delivered to Lang, clerk to the Cumberland factory at Glasgow.

At settling accounts, the Cumberland factory denied the receipt of 400 spindles with which they were charged. Bannatyne and Company brought a suit against the partners of the Cumberland factory, Fairly, Arrol, and Lang, concluding against them, to give an account, each for himself, of this yarn, and to make payment of it; and in the course of the process, the delivery to Fairly was proved.

Fairly, to exoner himself, endeavoured to prove that he had delivered it to Arrol, and that Arròl had delivered it to Lang; and offered the evidence of Arrol in support thereof.

Lang objected, That Arrol was not a habile witness, having an interest in the cause to exoner himself.

Answered: If carriers were not allowed the benefit of their servants' evidence to prove the delivery of goods, under a pretence, that their servants had an interest to swear falsely, in order to clear themselves, it would be impossible for them to carry on their business.

“ The Lords, before answer, allowed the evidence of Arrol to be taken, *cum nota.*”

For Fairly, *J. Dalrymple.*For Lang, *Miller.**J. D.**Fac. Coll. No. 71. p. 118.*

1759. July 5.

GEORGE MUSCHET Merchant in Stirling, *against* WILLIAM CHRISTIE Merchant there.**No. 195:**

Objection sustained, that the witness proposed, had an interest in the cause at issue.

Muschet being copartner with Corsar in a skinner-trade, Corsar, in conjunction with one Barclay, embezzled, and fraudulently disposed of the skins to Christie.

Muschet complained of this fraud by petition to the Magistrates, and craved, That Corsar and Barclay should be incarcerated; and that the skins embezzled should be sequestrated. He thereafter brought an action against Christie for repetition of the skins.

These processes were conjoined; and Christie offered to prove by Corsar and Barclay's oaths, that he fairly bought the skins, and paid for them.

Objected: That they are not habile witnesses; they are defenders in the conjoined processes; they may lose or gain by the determination in the cause; for