

WITNESSES

1532. June 20. GILBERT INGLIS *against* MR. ALANE INGLIS.

WITNESSES beand ressavit and examinat for probatioun of ony summoundis or alledgeance, gif the partie, at quhais instance thay were productit, and thay thair-
 efter alledge, that thay wer not examinat be the Judge upon the punctis of the
 summoundis or alledgeance; or that the clerk, writer of their depositions, writ
 thame not as thay deponit, thay aucht and sould be summoundit, to be of new
 examinat, and deponit and declare the veritie in the matter.

No. 1.

Balfour, p. 374.

1540. March 15. LORD SOMERVEL *against* ———.

In the Baron of ———'s cause, it was decerned that kinsmen and servants
 of the farmers, who were repelled frae witnessing because they might tyne or win
 in the matter, albeit the action was not intentit in his name, might be witnesses in
 the said Baron's cause.

No. 2.

Sinclair MS. p. 2. (Old copy.)

1541. February 13. TOWN OF SELKIRK *against* TENANTS OF KELSO.

The Lords decerned that kinsmen of the Provost and Bailies of Selkirk, and
 other indwellers in the Town, which Provost and community were actors and
 principals in the cause, might not be witnesses to the said Provost, Bailies, and
 community; and in the said cause *dubitatum fuit*, if a burgh next adjacent to the
 said burgh, and who pastured oftentimes their goods and cattle upon the com-
 monty, may be witnesses to the said Provost, Bailies, and community; and it then
 appeared to the Lords, that they were suspect *ratione affectionis ad causam*, and
 because they got, in the pasturing foresaid, profit of the said commnuty. And also

No. 3.

- No. 3. it was alleged by one of the Lords, that for the same cause witnesses were repelled of before, in the cause of the community of Renfrew and Rugland ; in qua causa erat quidam Pauper. R. Neilson. But this day, in causa communitatis de Selkirk non fuit decisum.

Sinclair MS. (Second copy.)

1541. February 16. P. GIBSONE against S. THOMAS WAUCH.

- No. 4. Thir persounis under-written may be repellit fra passing upon ony assise, and alswa fra beiring of ony testimonie or witness. In the *first*, the father of the partiè quha sould produce the witnessis, his sone, his cousing, his brother, or ony of his consanguinitie, affinitie, or allya, within the feird degre *inclusive*, Leg. Burg. C. 143. Bot it is to wit, that witnessis beand sib or attingent to the persewar and defendar, in the like degre defendand of consanguinitie or affinitie, aucht and sould nevertheles be repellit fra beiring witnessing ; because of the law of this realme, paritas gradus, seu par affectionis causa, non tollit suspicionem.

Balfour, p. 377.

1542. May 16. DOBIE against GLENBERVIE.

- No. 5. In a cause of non-entry of certain lands of Broadwoods, moved by John Dobie, donatar by the King's gift to the same at the King's Advocate's instance, against the Laird of Glenbervie, the Lords repelled *a testificando in illa causa*, the witnesses that were in degree descendant of consanguinity to the Laird of Craigiehall, albeit the summons was not intended at his instance, because he was hail solicitor, pursuer, and maintainer of the cause, and insisted therein upon his own expenses, as was notourly known to the Lords ; and so gave their interlocutor.

Sinclair MS. p. 48.

1542. February 18. DICKSON against VEITCH.

- No. 6. The Lords, in a cause of one Patrick Dickson of Dudhope against Sir Thomas Veitch, notary-public, and John Dickson for his interest, repelled certain witnesses produced by the said Patrick *ratione consanguinitatis in gradu prohibito inter ipsos et testes, licet testes ipsi allegant alteri parti in gradu æque propinquo* ; and that because that of our practicks, the theories of the legists and canonists, *quod par affectionis causa tollit suspicionem* has not place ; and also in the said cause, the Lords admitted the practick foresaid to prove an instrument, which he desired the said notary to give him, which the notary refused to