

No. 17. 1576. *January 11.* TOWN of LEITH *against* TOWN of KINGHORN.

Indwellaris and burgessis of ony town or burgh, may be witnessis in ony action or cause concerning the commoun weill or profit of the said town or burgh.  
*Balfour, p. 377.*

No. 18. 1581. *June.* WALLACE *against* ———.

There was an action depending betwixt Wallace and ———, which was admitted to probation hinc inde in probanda ætate. The one of the parties desired witnesses to be examined by commission that were senes et valetudinarii. It was alleged against the commission, that these persons could not be witnesses, because they were affines et consanguinei in secundo aut tertio gradu. To this was answered, quod in probanda ætate admittuntur ad dicendum testimonium tam affines quam consanguinei; and also the Lords received the witnesses ex officio. The Lords, nevertheless of the former allegiance, received the witnesses.

*Colvil (Second Copy) MS. p. 98.*

1582. *January.* STRANGER FLEMINGS *against* BURGESSES of EDINBURGH.

No. 19. There were certain Flemings that pursued certain Burgesses in Edinburgh, and others, for the wrongous intromission of certain goods that were taken from them by way of piracy, by the ship called the Unicorn, whereof John Cockburn in Leith was master. The summons being admitted to probation, they produced for witnesses certain persons, mariners and others, that were in the ship that committed the piracy, the time of the committing thereof. It was alleged against them, that they could not be witnesses, because they were *socii criminis*, and might depone to their own relief to cast the crime off them upon their marrows, quia de jure de criminibus confessi de aliorum conscientis interrogari non debent. It was answered to this, quod in criminibus quæ non possint committi sine sociis admittuntur socii; for into such matters as were done upon the sea there could be no others to see the doing thereof, but such persons as were upon shipboard. The Lords received the witnesses; licet nonnulli dominorum in contraria fuerunt opinione.

*Colvil MS. p. 348.*