

WITNESS.

16663

the horn that craves to be received. Receives not the witnesses produced by the rebel: Receives the cordiner by interlocutor. No. 48.

Nicolson MS. No. 536. p. 371.

1628. January 10. PATERSON *against* LAIRD of GRANGE. No. 49.

A rebel may be debarred to use witnesses though they be at the Bar.

Auchinleck MS. p. 254.

1628. November 19. A. *against* B. No. 50.

A procurator may be used as witness against his client, for proving the having of a writ for production whereof his client is pursued.

Auchinleck MS. p. 254.

1629. July 10. WELLS *against* MUIRHEAD. No. 51.

The skipper of a ship admitted witness *cum nota* to prove the delivery of victual transported by him to a factor at London, albeit it was alleged that he might lose or win in the cause, seeing by his charter party he would be obliged for delivery in case a factor denied the same.

Auchinleck MS. p. 254.

1629. December 4. CRICHTON *against* WATSON. No. 52.

Robert Crichton, Sheriff of Nidsdale, being charged by Andrew Watson to take and apprehend the Laird of Closeburn, suspends, that he was ready to obey, and desired the officer and party to go with him, and show him the rebel; which they refused, and that he, notwithstanding, went immediately after the charge to the house of Closeburn, and searched, but could not find the rebel, where upon all the premises he took instruments. It was replied, that the pursuer offered him to prove by witnesses that he offered to go with the Sheriff; but the Lords repelled this reply in respect of this instrument produced.

In the same suspension it was alleged by Watson, that he offered to prove by witnesses, that since the charge the Sheriff intercommuned with the rebel, in places within the sheriffdom, where he might have apprehended him. The Lords found the allegiance relevant to be proved by witnesses, the pursuer first condescending

- No. 52. upon the place and time, when and where he intercommuned with the rebel. It was alleged, that the Sheriff, before he went to search, sent advertisement to the rebel to escape; which was sustained to be proved by witnesses.

Auchinleck MS. p. 254.

1629. December 10. M'KENZIE against _____.

- No. 53. A witness summoned to compear at a certain day in an action of improbation of a testament, wherein the said witness was inserted, and a new day taken by the pursuer to summon the said witness again, because he compeared the first diet. In the mean time the said witness compears before the second diet, and desires to be examined. The pursuer being present, alleged, he ought not to be received, till the day whereunto he was summoned were first come. The Lords ordained the witness to be received, and depone within two days, that in that space the pursuer might prepare the interrogatories, and would not continue the examination till the pursuer might bring some gentlemen to be confronted with the witness, who heard him say that he was not present at the subscribing of the testament.

Auchinleck MS. p. 255.

1629. February 7. TOWN of IRVINE, Supplicant.

- No. 54. In a supplication at the instance of the town of Irvine, and of a party, who had: a pursuit depending before them, making mention, that the party's summons was admitted to his probation, and because the witnesses were actual dwellers in a foreign kingdom, by whom the pursuer would prove his summons, and that they, by their authority, could not direct a commission to the Judges, in the part where they dwelt, for their examination; therefore they craved, that the Lords would give them power and warrant to direct such commission, by authority of Session: The desire of this supplication was granted, *parte non audita*.

Durie, p. 422.

1630. January 26. CRICHTON against MILLANE.

- No. 55. The payment of an annual-rent of 10 merks, not sustained to be proved by witnesses, because the Lords would not by witnesses take away the right of infestment.

Auchinleck MS. p. 255.