

1630. February 11. RAE against ———.

No. 56.

James Rae being infeft in an annual-rent of 400 merks out of certain lands pertaining to Sir John Ker, whereof he had but a base infeftment, pursues for the same: It is alleged by one who has comprised the lands, and was infeft holden of the superior, that his base infeftment could give no right except he proved possession and payment made to him of the said annual-rent by witnesses. It was contended, by the compriser, that the payment was only proveable by writ. The Lords found the contrary.

*Auchinleck MS. p. 255.*

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1630. July 2. MURRAY against VASSALS of INCHFEE.

No. 57.

In a libel containing divers heads, for proving of ilk head the pursuer may have liberty to use as many witnesses, as if any head were contained in the summons, *quia quot capita tot. libelli.*

*Auchinleck MS. p. 256.*

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1630. July 24. EARL of MARR against HIS VASSALS.

No. 58.

In a libel where three terms are due to the pursuer, to use witnesses for proving of the libel, he ought to condescend at ilk term, what witnesses he will use; and if any of them be out of the country, he ought to give his oath that they are necessary witnesses for him. In which case, he will get warrant to summon them upon sixty days, either at the first term, second, or third term.

*Auchinleck MS. p. 256.*

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1630. December 21. L. JOHNSTON against EARL ANNANDALE.

No. 59.

The Lords found that witnesses, which *ex officio* were ordained to be examined before the Lords, *ad informandum animum judicis*, might be received and examined, albeit there were lawful objections proponed by the party, which might have repelled them *a testimonio*, if they had been produced as ordinary witnesses in the cause, to prove against the other party; but the Lords declared that after they were examined, they would consider what their depositions should work *in causa*, in respect of the just cause to decline them.

Act. Stuart.

Alt. Advocatus.

Clerk, Scot.

*Durie, p. 550.*