

No 184. 1692. December 23. WAUCHOPE of Niddry *against* KERS.

THE LORDS found, after Niddry had led witnesses, and seen what they had deponed, he could not now crave others he condescended on to be examined, not being in his former diligence; though he offered to depone, that they were *noviter venientes ad notitiam*, and that it should not stop the advising of the cause; for this might open a great door for bribery, and subornation of new witnesses, where he saw the former had not proved as he expected.

*Fol. Dic. v. 2. p. 190. Fountainhall, v. 2. p. 538.*

No 185. 1706. July 16. A. *against* B.

SOME parties to whose probation certain points were admitted to be proved *prout de jure*, petitioned the Lords, that the witnesses by whom they expected to have proved were either dead or gone out of the country, after they were, by their extracted diligence, cited, or were cast, upon legal objections, and therefore craved liberty to cite others in their room, who were come to their knowledge since. Some thought, if there were none yet adduced, or that those led deponed *nihil noverunt*, they might be allowed to cite others, though not in the first diligence, they deponing they were emergent, and *noviter venientes ad notitiam*. But the plurality thought this against form, and a bad preparative, which might open a door to suborning and picking out of witnesses, and therefore refused the bill, seeing he may blame himself that did not put in all the witnesses he intended to make use of into his first diligence.

*Fol. Dic. v. 2. p. 191. Fountainhall, v. 2. p. 343.*

No 186. 1711. February 7. CAMPBELL of Glasnock *against* FARQUHAR of Gilmillscroft.

No 186.  
A party cannot be compelled to examine a witness he has cited.

THE deceast Farquhar of Gilmillscroft having got a disposition from Campbell of Glasnock, the same was quarrelled, in a reduction, as granted the day before he died, when he was utterly insensible of what he was doing; and the other contending he was then rational, and acted several things as pertinently as ever he did at any time before; a conjunct probation was allowed anent his condition at that time. And Gilmillscroft adducing two witnesses, Davidson of Holehouse, and the other called Weir, it was *objected* against the first, That he could not be a habile witness, because he might tyne or win in the cause; in so far as he having trusted Glasnock with the right of a bond, he took a retrocession from him that very day Gilmillscroft's disposition was subscribed, and so *consimilem*