

Albeit it was alleged for the pursuer, That Linn's servants could not be received, partly, because their master who furnished the cask would be liable for damages upon the event of its being proved insufficient; partly, because they themselves might happen to be liable as intrusted by their master in furnishing and dressing up the cask: No. 127.

In respect it was answered for Gordon; That there is no way to prove the sufficiency of any cask but by the person through whose hands it comes; and if such an objection were sustained, no merchant, apothecary, or tradesmen, could ever prove their accounts, and delivery of goods to their customers or employers; therefore servants are frequently received as witnesses in causes concerning their masters.

Forbes, p. 25.

1706. June 18. ISOBEL BIRREL *against* MARY FERGUS.

No. 128.

In an action of reduction at the instance of Isobel Birrel, as heir to Agnes Birrel, of a disposition granted by the said Agnes to William Fergus her husband *stante matrimonio*, upon the granter's revocation, against Mary Fergus, heir to the said William; the Lords refused to admit before answer, several women (who as creditors to the wife, or as representing her creditors, had received payment of their debt from the husband) to depone as witnesses for instructing the onerous cause of the disposition; seeing women are inhabile witnesses in all civil causes, except where, *ob penuriam testium*, they are necessary, as about the birth of a child.

Forbes, p. 108.

1706. June 26. ANDERSON *against* GORDON.

No. 129.

A man who had got a woman with child, having thereafter at a communing with her friends, promised to pay a sum of money to one of them for her behoof, she being on the other hand to give him a declaration, That he was under no promise of marriage to her; the Lords found, That this was not a naked promise, but of the nature of a bargain, and therefore proveable by witnesses; and it being objected against that friend to whom the money was promised for her behoof, That he being a party could not be admitted, the Lords nevertheless admitted him as a competent habile witness, he being a communer, and so the fittest person to declare the terms.

Fountainball.

* * This case is No. 379. p. 12234: *voce* PROCESS.