

No. 143. us to do good for evil, and love our enemies ; and if the witness purge himself of malice, it is supposed that he walks conform to the Gospel rule.

The Lords allowed the witness to be received, he purging himself by oath of any malice towards the pursuer.

Forbes, p. 540.

1712. *January 17.*

SIR WILLIAM MENZIES and ALEXANDER CLERK, *against* WILLIAM MORISON
of Prestongrange.

No. 144:

Upon report of the Lord Bowhill, the Lords allowed Marini a Jew to be received a witness, because his religion doth not hinder him to swear our *formula* by God himself, &c. unless he were a Sadducee, who denies the Resurrection, and so could not depone "as he shall answer to God at the Great Day."

Forbes, p. 570.

* * * Fountainhall reports this case :

A Jew being adduced as a witness in a certain cause, it was objected by the other party that he was inhabile in law, considering the rooted hatred they bear to all Christians. The Lords thought, if a Jew were led a witness in a cause betwixt a Christian and a Jew, there might be reason in that case to suspect him, but it being betwixt two Christians, his disowning Jesus Christ for the Messias could no more incapacitate him, than it would do a Socinian ; our *formula jurandi* mentioning only God in the general ; and though he will not swear on the New Testament, yet he will swear by Jehovah, on his Torah or the law of Moses. Yea, which is more, a Turk or a Pagan are capable ; for in Captain Green's case for piracy, two Heathen boys were admitted ; and if in criminals, why not in civil causes ? It was also remembered, that the Queen had knighted Sir Solomon de Medina a Jew trading at London ; and if capable of honours, why not of bearing testimony ? And we allow Quakers to declare in their own way.

Fountainhall, v. 2. p. 708.

1712. *June 28.*

The EARL of WINTON *against* MR. WILLIAM HAY of Drummelzier, and
MR. JAMES SETON, Brother to the Viscount of Kingston.

No. 145.

Upon report of the Lord Ormiston, the Lords refused to examine witnesses, as to Drummelzier's concurring with Mr. Seton in the management of the Earl's estate by advice ; because, advice and concurrence are general terms dipping in law ; but ordained the witnesses to be examined as to words or facts they heard or saw Drummelzier say or do.

Forbes, p. 604.