

all facts that he knew before the complaint anent this arrestment, and would not limit it to facts not told to him by his client in the course of his employment. Arniston mentioned an example, if a defender should employ his agent to scroll a discharge and that the client would get it forged.

No. 27. 1747, June 16. A. against B.

DRUMMORE reported a question, Whether a witness could be received who is sister to the adducer, but who is daughter to the person against whom she is adduced? Kilkerran mentioned a similar question reported by me 24th January 1744, (No. 21.) wherein I had once given an opinion repelling the objection, but upon many precedents from Balfour, Hope, Haddington, &c. taken it to report, and the Lords sustained the objection; as they did also in this case. And Arniston observed that by the argument used for repelling the objection, one might be Judge for his near relation, if the other party was equally near. A strong authority was also cited from Voet for the objection.

No. 28. 1748, July 20. MATTHEW STRANG against JAMES STRANG.

THE Lords found that a nephew-in-law (a niece's husband) might be adduced as a witness for his uncle-in-law in a proving the tenor of a tailzie, though what was to be proved by him was *nuda emissio verborum*. But in the same case found that the mother-in-law or a nephew who was also a substitute, could not be witnesses.

No. 29. 1749, Nov. 21. EARL OF MARCH against A. SAWYER.

THE Countess of March having made over a bond of L.10,000, the question was anent the delivery or not delivery. In the proof Mr Sawyer adduced two witnesses who had been the instrumentary witnesses to the bond, one of them, Dickie, is Mr Sawyer's agent in this process, the other Lamb, is Mr Sawyer's clerk in his office of paymaster, and Lord March alleges was present at consultations. As to the first, besides the case and others of that kind mentioned in the minutes, I mentioned the case 22d July 1742, (No. 16.) where the father and brother of the creditor, instrumentary witnesses to his bond, which was granted by a minor, were not admitted to prove that *minor majorem se dixit*. We sustained the objection against Dickie. *Pro* were Dun, Monzie, Shewalton, Justice-Clerk, *et ego*. *Con.* were Milton, Minto, Easdale, Murkle,—and the President seemed of the last opinion. Drummor did not vote. We repelled the objection to Lamb, because they did not offer to prove partial counsel. 12th January 1750, We adhered, because they did not sufficiently qualify Lamb's acting as agent. But on appeal Dickie was ordered to be received *cum nota*.

No. 30. 1749, Nov. 21. JOHN BLAIR against DNIN.

NISBET adduced a witness for John Blair to prove John Dinn's accession to a fraud against Blair, inducing him to accept a bill drawn on them two by James Blair, on the faith that Dinn was also to accept, and for their relief an assignation was granted to them by James Blair the drawer; and Dinn had acknowledged a contrivance to that effect by

James Blair, and that he was privy to it. Whereupon I allowed John Blair to prove further acts of accession by Dinn. And Nisbet, who was writer and one of the witnesses to the above assignation by James Blair was adduced to prove that Dinn was present when the assignation was granted. Dinn objected that Nisbet is nephew to John Blair. Answered: He is also nephew to John Dinn's wife; 2dly, a necessary witness; 3dly, already a *semiplena probatio*. Yet the Lords sustained the objection and cast the witness.

No. 31. 1750, Feb. 28. JOHN DINGWALL *against* MONRO of Culrain.

IN a process, James Grant, merchant in Inverness, having been adduced as a witness by Culrain and attended long here at a great expense before he was examined, for which he got only the ordinary allowance of 16d. per day; after he returned home there occurred some occasion to examine him again upon other facts. And being brought up a second time, the Lords allowed him L.100 Scots for his expenses of the last journey.

No. 32. 1750, June 22, 27. FALCONER of Phesdo *against* FALCONER, &c.

IN a reduction of several bonds granted to different relations by Lady Phesdo then 94 years old, being quarrelled on the head of incapacity, of the bonds not being read to the defunct, and of her hand being led; the pursuer examined two of the instrumentary witnesses, servants called up to sign witness; but others of the instrumentary witnesses not examined. Two of the defenders who had got these bonds gave in a petition praying to cite six witnesses. Objected, too late now after the pursuer has adduced his proof. 2dly, These witnesses either got bonds themselves or are nearly related to others who got bonds, or are related to the petitioners themselves. The Lords allowed the instrumentary witnesses to be cited, as to all that had passed at signing the bonds. 2dly, Refused the petition as to the other witness for Elizabeth Douglas, because within the degrees descendant to her. 3dly, Refused the petition as to the other petitioner Patrick Falconer with respect to other witnesses (besides the instrumentary ones) who have got bonds themselves. 27th June, Rejected a witness who was father and administrator-in-law to an infant daughter, to whom one of these bonds was given. (See No. 26, *voce* WRIT.)

No. 33. 1751, July 19. JAMIESON, &c. *against* WELLS.

IN the trial of forgery Jamieson against Alexander Forrester, wherein the pursuer endeavoured to improve the subscription of one Calpine, and for that end to recover some of Calpine's true subscriptions; it was proved that Robert Wells, (who was married to the prisoner's wife's sister) getting notice that one Fulton who had a writing subscribed by Calpine was summoned, went to his house, made a pretence for getting a sight of the writing, and Fulton going out of the room he erased Calpine's subscription, and on Fulton's return gave him the paper folded so that Fulton did not discover the trick till next day; and from thence Wells went to one Barr who had a bill accepted by Calpine, and endeavoured to purchase it, but not agreeing trusted him to Glasgow, where the bill was brought up by Wells's wife. Therefore we committed him to prison till the 28th of