

No. 28. 1610. *November 6.* LEYS *against* DRUM.

It is not constantly resolved by the Lords, whether a bastard may be witness for his kinsman or not ; because albeit the law makes him not to be of the blood and kindred, yet it being known that he bears a natural affection, as kind and constant sometimes as they who are of the lawful blood, the Lords refused to admit one to prove lands to be severally known, because it was a public thing, which might be proved by many common unsuspect witnesses, *et sic non erat penuria testium.*

*Haddington MS. v. 2. No. 1995.*

No. 29. 1610. *December.* AIKMAN *against* SOMERVELL.

A witness being produced for a party, and declinator being proponed against his reception, because he is of kin to the producer, the said producer will not be heard to reply upon his own bastardy, thereby pretending to elide the exception of kindred *quia non est audiendus qui allegat turpitudinem suam.*

*Haddington, v. 2. No. 2054.*

No. 30. 1611. *January 11.* DALGLEISH *against* GAW.

It is not partial counsel in a witness to declare to one of the parties the verity of that which he knows in the cause, unless he do it unrequired, and inform and persuade the party to intent the action. The Lords will not receive near kinsmen to be witnesses for their kinsmen ; but if they find *penuriam testum*, and great appearance that for want thereof the cause may perish, they will ordain the party to give their oath in presence of those who know the matter.

*Haddington MS. vol. 2. No. 2083.*

This case is reported by Kerse :

In an action pursued by Helen and Grisel Gaws and Thomas Dalgliesh, spouse to the said Helen, against Isobel Ross, relict of John Gaw, for exhibition of a bond of 3000 merks, the Lords received William Hall, John Mathew, George Johnston, and Henry Elder, who were seconds of kin to the pursuer ; as was of before, in an action pursued by Sir John Ker against the tenants of Lessudden, wherein the Lords received Oliver Sinclair, who was second of kin to the Laird of Rosline, defender of the cause.

*Kerse MS. f. 259.*