

1639. *January 31.* DUNDASS *against* His FATHER'S EXECUTORS.

No 369.

A CERTIFICATE signed by a minister, bearing, that the testator left a particular legacy, above 100 Scots, to a person named in the certificate, found a sufficient evidence of the legacy, though not signed by the testator, nor by the minister in his name, but only as a certificate of a fact, drawn out in the shape of a notarial instrument; and this, notwithstanding the testator had formerly made his testament, without mention of any such legacy.

Fol. Dic. v. 2. p. 243. Durie.

* * * This case is No 38. p. 2195. *voce* CITATION.

1665. *January 13.* CHARLES CHARTERS *against* a SKIPPER.

No 370.
Whether an instrument of intimation is necessary, that a ship lies waiting freight?

CHARLES CHARTERS having freighted a ship to Queensburgh, by charter party, the Skipper was to lie so many lie days, and to bring a freight thence. He returned without full freight, whereupon Charles refuses full payment; and being decerned by the Bailies of Leith to pay the rest, he suspends, on this reason, that the Skipper ought to get the freight only proportionally to the loading, and offers to prove the third part less than the full loading brought home, and that the skipper could not have his full freight, unless he instruct that he intimated to the factor at Queensburgh, to whom he was directed, of his coming, and that he lay his lie days; and after intimation to the factor, to give him any ware he had, he took instrument, or protested thereon.

THE LORDS found, he ought to prove the intimation, *ut supra*, by witnesses, but required no protest, or instrument thereon.

Stair, v. 1. p. 253.

1671. *February 4.* LAWRIE *against* GIBSON.

No 371.

THE offer of a disposition, in consequence of an exceptionable decret, pleaded upon as an homologation of the decret, was not found proved by an instrument, taken in the hands of a notary upon the offer; but it was found necessary that the same should be adminiculated by the oaths of the instrumentary witnesses.

Fol. Dic. v. 2. p. 243. Stair. Gosford.

* * * This case is No 5. p. 5622. *voce* HOMOLOGATION.