

1671. *July.* ANDREW HALDEN *against* NICOL CAMPBELL, stabler.

NICOL CAMPBELL, stabler, being cautioner for Samuel Meikle to Andrew Halden in a bond of L.1900, and being charged thereupon, suspended (as also raised reduction) upon this reason; that the bond can receive execution against him for no more but allenary the sum of L.1200, because he not knowing to subscribe himself, gave command to the notaries to subscribe for him as cautioner in the foresaid sum allenary, of L.1200, and he designed no more; and they have bound him as cautioner in the whole: and this command he offered to prove by the notaries and witnesses inserted their oaths.

Much was disputed against the relevancy of the probation of the reason, tending to take away a bond by witnesses. Yet the Lords having regard to the suspender's illiterature, who could neither read nor write, and that he has been *vir integræ famæ*; before they would give answer to the relevancy, (though they inclined much to sustain it in this *juncto* of circumstances,) they ordained the notaries and witnesses to be examined upon the reasons; as also those that wrote the bond and were present at the communings. Upon whose depositions the bond was restricted, and Nicol assoilyied *pro reliquo*.

Advocates' MS. No. 230, folio 106.

1671. *July.* Anent the DIETS of the SESSION.

ABOUT this time, and after, there was a great rumour about the changing of the diets of the session, by taking away the two months of summer session and adjecting them to the winter, which was thus to sit five or six months together, and all the remanent of the year to be vacancy. Much was pled for the convenience of such an alteration; but if the inconveniences that would ensue thereon be also impartially weighed, in my judgment they preponderate; for 1^{mo}, *Omnis mutatio etiam in melius est periculosa, et in rebus novis constituendis evidens et summarum utilitas esse debet antequam recedatur ab eo jure quod diu æquum visum est; l. 2. D. de Constitutionibus Principum*; and our predecessors, who modelled a summer and a winter session, were every whit as knowing and as rational as we. * 2^{do}, If the session sit down on the 1st of October then ye call in the lieges to Edinburgh in one of the throngest months of harvest that they have, which by law is ever appointed to be feriot time; *l. 1. per totum, D. de Feriis; item toto titulo Codice*. And though within these fifteen or twenty years we

* And old customs, like old lived men, are presumed to be of a sound, equable, and wholesome temperament and constitution. By the Town Council books, it appears, in 1630, endeavours were made by some for a change of the Sessions' course, (though I believe not this that is intended now.) The Council writes to Mr. John Hay, their Commissioner at London, to deal with his Majesty to stop the same;—that their being mewed up within town two of the pleasantest months in the year, and in effect that which is all the summer we have in Scotland, is most destructive to our healths, and impedes hugely the improvement men might make of their estates; and those who are at any distance have no benefit of them at all, but must furnish themselves at Edinburgh. Yea, the summer session is the cause of all our prodigality in apparel, house mails, and other ways; yea its abolishment, might be instructed, would be £20,000 Sterling a-year in the lieges' way.—See sixteen reasons against taking away the Summer Session, in a paper beside me, drawn by