

1682. *January.* HAY of Murie *against* Phinhaven.

No. 91.

The lands of Kinmonth being quarrelled as falling under recognition, and there being a joint probation, the defender, the heritor, adduced one ——— as witness; against whom it was objected, That he was creditor to Kinmonth, who had nothing to pay his debt if the lands fell under recognition; and consequently the witness would tine or win.

The Lords repelled the objection against the witness, his interest being but consequential; and it did not appear but that the debtor might have objections against the debt, which the witness had assigned to his own son, though after citation, and now Phinhaven was heritor and defender.

*Harcarse, No. 783. p. 221.*

1682. *February.* LADY CRUMSTANE *against* SIR JAMES COCKBURN.

No. 92.

It being objected against witnesses, That the adducer had called them to his chamber, and showed them an unsubscribed rental of the lands, whereof the quantity of the rent was to be proved; and so they were instructed what to depone; *2do*, One of the witnesses demurred to swear, that he was worth the King's unlaw.

Answered: The showing of a rental was no instructing, seeing they were to depone on their knowledge; *2do*, The witness did depone, that he was worth the King's unlaw.

The Lords repelled the witnesses as instructed.

It being objected against another witness, That he possessed an acre of grass without a tack.

Answered: He was a merchant of a greater stock and trading, and so could be under no influence upon the account of that acre of grass.

The Lords repelled the objection against this witness.

*Harcarse, No. 784. p. 221.*

1682. *February 24.* FLOCKART *against* LORD ROLLO.

No. 93.

It being objected against witnesses adduced in a process for proving the passive titles against the defender, that they were creditors to his father, and so must tine or win by the probation, in so far as the proving of the passive titles would make the defender represent his father, which would secure the debts due to the witnesses.