

No. 107. 1687. *January.* KER of Greenhead *against* SCOT of Gowdielands.

In the reduction of a fraudulent disposition, the witnesses adduced for proving a point of fact having deponed, that *nihil noverunt*, the adducer applied to the Lords, craving the defenders might be examined upon oath concerning the fraud, either as witnesses or as parties.

Alleged for the defenders : That they could not be led as witnesses ; because, *1st*, They were not cited in the first diligence ; *2do*, They were parties, nor were they bound to depone as parties, the pursuer having elected his manner of probation by witnesses, and actually examined them.

The Lords refused to examine the defenders, either as parties or as witnesses, for the reasons foresaid.

*Harcarse, No. 798, p. 225.*

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No. 108. 1687. *November 8.* POWRIE FOTHERINGHAME *against* LORD PANMURE.

The moveable tenants of my Lord Gray (who was author to Powrie, and liable in warrandice of the fishing) allowed to be witnesses for proving possession to infer prescription of a right to the fishing.

This was not much controverted.

*Harcarse, No. 807. p. 226.*

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No. 109. 1688. *February.* BAILIE CHARTERS *against* KIERIE of Cregengelt.

Found that a witness in the fourth degree is habile, the objection being against witnesses within forbidden degrees, and the fourth degree is not forbidden.

*Harcarse, No. 808. p. 226.*

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No. 110. 1692. *December 23.* BRISBANE *against* BRUCE.

Brisbane of Peeland, and the other adjudgers of Bruce of Kennet's estate, having raised a sale of the lands, and leading some of the creditors as witnesses to prove the rental; the Lords refused to admit them, albeit they were necessary, and there was *penuria testium* in the case, and that they were not adduced to prove the value, (wherein they might have been more suspected as biassed,) but only the rental of the lands.

*Fountainhall, v. 2. p. 538.*