

1707. June 14.

GEORGE LIVINGTON of Midfield, *against* Mrs. MARGARET MENZIES, Daughter
to CULTERALLERS.

No. 130.

A remote substitute in a first tailzie revoked by a second, not sustained a witness for proving that the second tailzie was elicited from the granter on death bed by importunity or undue insinuations when his judgment was disturbed by sickness, although the said substitute was content to renounce his expectation by the first tailzie.

In a competition for the estate of Saltcoats betwixt George Livington, who founded on a tailzie granted to him and others therein substitute by the deceased George Livington of Saltcoats; and Mrs. Margaret Menzies, who pleaded that the granter of that tailzie had revoked it by a declaration under his hand, and made a posterior tailzie in her favours; George Livington being allowed to adduce what probation he could for instructing that the revocation of the first tailzie, and the second tailzie in favours of Mrs. Margaret Menzies, were elicited from Saltcoats by importunity, or undue insinuations, when his judgment was disturbed and weakened by sickness; and for proving thereof having produced Alexander Aikenhead as a witness; Mrs. Margaret Menzies alleged, that he could not be admitted, because he is a substitute in the first tailzie, which is revoked by the second, and so has too great an interest in the affair to be allowed to depone as a witness.

Answered for Mr. Livington: That Aikenhead was but a very remote substitute in the first tailzie, and had so very little expectation thereby, that he was content to renounce the same. Besides, this being a probation of the condition a person was in upon death-bed when only friends could be supposed to have been about him, one may be sustained as a necessary witness here, who might perhaps be excepted against in other cases, where *copia* of indifferent witnesses may be had.

Replied for Mrs. Margaret Menzies, That Aikenhead's forwardness in offering to qualify himself to be a witness, by renouncing his expectation by the first tailzie is so far from being a tolerable ground of admitting him, that it affords a shrewd presumption of his being too much interested in the affair.

The Lords sustained the objection against the witness, and refused to admit him.

Forbes, p. 168.

* * See No. 69. p. 3261. *voce* DEATH-BED.

1707. June 19.

THE FEUERS and MERCHANTS of the TOWN of FRAZERBURGH *against* WILLIAM
LORD SALTOUN.

No. 131.

In the declarator at the instance of the Feuers and Merchants of Frazerburgh against the Lord Saltoun, the pursuers having cited Alexander Gordon, Clerk of the said Burgh, to exhibit the court and council books, who first compared and deponed before extracting of a second diligence against him, and again came up and deponed after it was extracted; the Lords refused to allow him the expenses of his second journey, in respect of the second diligence; but allowed him