

James Blair, and that he was privy to it. Whereupon I allowed John Blair to prove further acts of accession by Dinn. And Nisbet, who was writer and one of the witnesses to the above assignation by James Blair was adduced to prove that Dinn was present when the assignation was granted. Dinn objected that Nisbet is nephew to John Blair. Answered: He is also nephew to John Dinn's wife; 2dly, a necessary witness; 3dly, already a *semiplena probatio*. Yet the Lords sustained the objection and cast the witness.

**No. 31. 1750, Feb. 28. JOHN DINGWALL *against* MONRO of Culrain.**

IN a process, James Grant, merchant in Inverness, having been adduced as a witness by Culrain and attended long here at a great expense before he was examined, for which he got only the ordinary allowance of 16d. per day; after he returned home there occurred some occasion to examine him again upon other facts. And being brought up a second time, the Lords allowed him L.100 Scots for his expenses of the last journey.

**No. 32. 1750, June 22, 27. FALCONER of Phesdo *against* FALCONER, &c.**

IN a reduction of several bonds granted to different relations by Lady Phesdo then 94 years old, being quarrelled on the head of incapacity, of the bonds not being read to the defunct, and of her hand being led; the pursuer examined two of the instrumentary witnesses, servants called up to sign witness; but others of the instrumentary witnesses not examined. Two of the defenders who had got these bonds gave in a petition praying to cite six witnesses. Objected, too late now after the pursuer has adduced his proof. 2dly, These witnesses either got bonds themselves or are nearly related to others who got bonds, or are related to the petitioners themselves. The Lords allowed the instrumentary witnesses to be cited, as to all that had passed at signing the bonds. 2dly, Refused the petition as to the other witness for Elizabeth Douglas, because within the degrees descendant to her. 3dly, Refused the petition as to the other petitioner Patrick Falconer with respect to other witnesses (besides the instrumentary ones) who have got bonds themselves. 27th June, Rejected a witness who was father and administrator-in-law to an infant daughter, to whom one of these bonds was given. (See No. 26, *voce* WRIT.)

**No. 33. 1751, July 19. JAMIESON, &c. *against* WELLS.**

IN the trial of forgery Jamieson against Alexander Forrester, wherein the pursuer endeavoured to improve the subscription of one Calpine, and for that end to recover some of Calpine's true subscriptions; it was proved that Robert Wells, (who was married to the prisoner's wife's sister) getting notice that one Fulton who had a writing subscribed by Calpine was summoned, went to his house, made a pretence for getting a sight of the writing, and Fulton going out of the room he erased Calpine's subscription, and on Fulton's return gave him the paper folded so that Fulton did not discover the trick till next day; and from thence Wells went to one Barr who had a bill accepted by Calpine, and endeavoured to purchase it, but not agreeing trusted him to Glasgow, where the bill was brought up by Wells's wife. Therefore we committed him to prison till the 28th of

August. And at first we agreed to set him on the pillory for an hour, but before the sentence was written, we thought that would make him infamous, which we thought too severe, and therefore left it out of the sentence.

No. 34. 1751, July 26. *GIBB against WALKER AND SIMPSON.*

See Note of No. 19, *voce* CAUTIONER.

No. 35. 1752, Dec. 19. *PARK against ELIZABETH DALRYMPLE.*

THE Lords sustained an objection to a witness, that she was mother-in-law to the adducer, notwithstanding the answer that she was in the same relation to the objector.

No. 36. 1753, Feb. 7. *CHRISTIE against WILLIAM ROBERTSON.*

Two menial servants of Christie's and two cottars were admitted witnesses for proving the value of his crops of corn 1751 and 1752 cut down by him while they were in his service, as necessary witnesses, but not to prove matters of judgment, viz. the different values of crops of corn and crops of grass of the same grounds.

No. 37. 1753, Feb. 16. *THE DUKE OF ROXBURGH against CHATTO.*

IN this trial of forgery, mentioned *supra* February 6, (No. 30, *voce* FRAUD) Mr Walter Pringle, Advocate, was adduced for the pursuer, and being interrogated, Whether the prisoner had showed him the writing quarrelled, what the tenor or purport and date of it were, and what conversation he had with Mr Robert Pringle, one of the Duke's lawyers, concerning it? Objected, that he was employed as counsel for the prisoner, and therefore could not be obliged to reveal any of his client's secrets. The Lords found him obliged to depone, Whether he had seen the writing, and what he remembered of the tenor and date of it, and what conversation he had with Mr Robert Pringle, but would not ask him from whom he got the paper, nor any thing that his client said to him about it? which was agreeable to the precedent, 21st December 1675, Creditors of Wamphray against Lord Wamphray, (Dict. No. 12. p. 347.)

No. 38. 1753, Feb. 16, July 5. *SAME PARTIES.*

IN this trial of forgery one of the instrumentary witnesses dying during the trial, other witnesses were adduced to prove what he said of the matter on death-bed; and the defender objected to the competency, for that was but hearsay evidence. But the Court repelled the objection, and distinguished between the evidence of hearsay of an ordinary witness and of a person so connected with the crime, that the confession of an accomplice is a pregnant circumstance even where he is not or cannot be adduced a witness. That in a trial of murder evidence will be admitted of what the person killed said, and whom he charged. And in the trial of James M'Grigor for the rape of Jean Keay, her declaration was allowed to be read to the Jury.