

SECT. VI.

Extrajudicial Declarations, Certificates, &c.

1542. *June 28.* CHIRNSIDE *against* EARL of HOME.

THE Laird of East Nisbet, Ninian Chirnside, pursued the Lord Home for a spuilzie. The Lord *excepted*, That he was cursed per canon. Si quis suadente, in L. 17 : 1 : 4, for the slaughter of the Prior of Coldingham. THE LORDS of Council understood that therefore he was cursed long since, and so the LORDS found he might not stand in judgment in agendo. The said Laird produced a testimonial of the Bishop of Buchan, commissioner apostolic ad effectum absolventi dict. Ninian ex causa prædicta, and testified by his letters that he had absolved long since the said Laird. The Lord *replied*, That there was no absolution, et quod per testimoniales literas non probatur absolutio, ut per L. 7, C. De Edend.—THE LORDS, by interlocutor, decerned, That the said letters testimonials proved not absolution, et sic repulerunt dictum Ninianum ab agendo pretextu excommunicationis objectæ.

Fol. Dic. v. 2. p. 261. Sinclair, MS. p. 36.

No 525.

A person on being excommunicated, and *non habens personam standi in judicio*, yet producing letters testimonial from the Bishop, bearing that he was absolved, the Lords found that this did not sufficiently prove the absolution, *nisi constitisset ex ipsis curie actibus.*

1559. *June 7.* ANDRO RUTHERFURD *against* JAMES DEMPSTAR.

CONFESSIOUN maid be ony man outwith judgment, and instrument tane thairupon; is sufficient probatioun aganis the maker thairof in judgment; as gif ony man havand ony gudis or geir in his possessioun, confessit the samin to appertene to ane uther, and the uther, or ony in his name, tak instrument thairupon, the samin preivis sufficientlie that the gudis pertenis to that uther.

Fol. Dic. v. 2. p. 262. Balfour, (CONFESSIOUN.) No 1. p. 381.

No 526.

1626. *July 25.* SMITH *against* BAILIES of NORTH-BERWICK.

A TESTIFICATE from the Lyon King at Arms, not sustained as a proof, That a messenger was deprived by a sentence. This was in a process against Magistrates, who refused to take a prisoner offered to them by the messenger.

Fol. Dic. v. 2. p. 261. Durie.

No 527.

*** This case is No 18. p. 11694. *voce* PRISONER.