

1587. *August.*CHALMERS *against* MUNRO.

In an action between Mr. David Chalmers, one of the ordinary number of the Session, and Mr. George Munro, anent the proving of possession of the uptaking of the duties of the _____ of Ross, there were witnesses produced by Mr. David, and it was excepted against them, that by the space of 15 days before they had been kept by the said Mr. David in his house, in _____, and not suffered to pass furth of his house, the which was offered to be proved instantly at the bar, et sic fuerunt domestici familiares, que repelluntur a testimonio dicendo; to the which it was answered, that the party that summonses any witness is bound to find the expense, and especially to such as *de rebus et bonis propriis* might not well do the same, and whether it was given *ante productionem sive post*, provided it was not given *subornationis causa*. The Lords repelled the exception, and admitted the witnesses.

No. 20.

*Colvil MS. p. 148.*1589. *May.*ACHISONE *against* SINCLAIR.

Into the term of probation assigned by Alexander Achisone of Gosford, to prove against James Sinclair, there was a witness produced by the said Alexander, called Richardson, that dwelled in Ballencrieff. It was objected against himself by Sinclair, defender, that there was one to whom the defender was third of kin, and so according to the daily use and custom of Scotland, the deadly feud that is once contracted follows the kin and surname, and the witnesses that were produced could no more depone against the said Sinclair, defender, nor he could depone against the principal slayer of his nephew. The witness being interrogated, and sworn, deponed, That he bore no deadly feud against the defender. Answered to the objection, that in so far as the defender was not at the committing of the slaughter, and participate of the same, and also that the witness' self had deponed that he bore no feud against the defender, that the witness ought to be admitted. The Lords found, that the witness should not be received, and that notwithstanding of the witness' own deposition and declaration that he bore no feud; sicut bona pars Dominorum in contraria fuerunt opinione.

No. 21:

*Colvil MS. p. 440.*1606. *February 14.* L. CULMALINDIE *against* EARL OF ORKNEY.

The Laird of Culmalindie pursued the Earl of Orkney for contravention; because after the charge and caution found, Captain Allan _____ domestic servant to the Earl, and captain of the ship called the Dunkirk, came to the pursuer

No. 22.

Sufferers of violence at sea may be witnesses, if