

No. 46. 1627. July 17. THOMSON *against* BALLANTINE.

A direction given by a merchant to a mariner to bring out of London some shanks litted there, and to stow them in some secret place of the ship for deceiving of the customer. The ship being cast away, and the mariner pursued for the shanks, proponed the foresaid defences; which the Lords sustained to be proved by witnesses.

*Auchinleck MS. p. 253.*

No. 47. 1627. March. NORBAT ENGLISHMAN *against* ———.

The Lords found in an action of one Norbat Englishman, that witnesses being out of the country, summoned once upon sixty days, needed not, in the terms of denunciation and caption, to have diligence reported against them, upon the intervening space of 60 days, albeit they were still out of the country; but that these terms ought to proceed against them, as against other witnesses within the country.

Act. Hope. Alt. Ja. Gibson. Clerk, Gibson.

*Durie, p. 289.*

No. 48. 1628. January 10. SIR JAMES DUNDAS *against* SWINTON.

A party admitted to be witness who had made *cessionem bonorum*, because he was not infamous although poor.

In removal of tenants, the son received witness to the tenants against their master, notwithstanding he was *in familia paterna*,

*Auchinleck MS. p. 254.*

\* \* Nicolson reports this case:

Cunningham alleged David Borthwick, witness produced by the pursuer, could not be witness because he was put to liberty *ex cessione bonorum* by decret, and so being bankrupt by the act of Parliament against divers *est infamus*. Answered, *Cessio bonorum non notat infamia*, and the act is not against cedents *bonis judicialiter*, but against divers annalzieing fraudfully. Receives him witness by interlocutor reported from the Inner-house after the proponing instantly by Innerteill: Cannot be received the witnesses, because the producer is at the horn. *Hem*, one of them cannot be witness, because he is *in familia paterna*, and the father is the producer's tenant. Answered, He is a cordiner of his craft, and works now and then in the country, and for the first, it is the witnesses who are not at