

- No. 52. upon the place and time, when and where he intercommuned with the rebel. It was alleged, that the Sheriff, before he went to search, sent advertisement to the rebel to escape; which was sustained to be proved by witnesses.

*Auchinleck MS. p. 254.*

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1629. December 10. M'KENZIE against \_\_\_\_\_.

- No. 53. A witness summoned to compear at a certain day in an action of improbation of a testament, wherein the said witness was inserted, and a new day taken by the pursuer to summon the said witness again, because he compeared the first diet. In the mean time the said witness compears before the second diet, and desires to be examined. The pursuer being present, alleged, he ought not to be received, till the day whereunto he was summoned were first come. The Lords ordained the witness to be received, and depone within two days, that in that space the pursuer might prepare the interrogatories, and would not continue the examination till the pursuer might bring some gentlemen to be confronted with the witness, who heard him say that he was not present at the subscribing of the testament.

*Auchinleck MS. p. 255.*

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1629. February 7. TOWN of IRVINE, Supplicant.

- No. 54. In a supplication at the instance of the town of Irvine, and of a party, who had: a pursuit depending before them, making mention, that the party's summons was admitted to his probation, and because the witnesses were actual dwellers in a foreign kingdom, by whom the pursuer would prove his summons, and that they, by their authority, could not direct a commission to the Judges, in the part where they dwelt, for their examination; therefore they craved, that the Lords would give them power and warrant to direct such commission, by authority of Session: The desire of this supplication was granted, *parte non audita*.

*Durie, p. 422.*

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1630. January 26. CRICHTON against MILLANE.

- No. 55. The payment of an annual-rent of 10 merks, not sustained to be proved by witnesses, because the Lords would not by witnesses take away the right of infestment.

*Auchinleck MS. p. 255.*