

1672. June 13. The TOWN OF INVERNESS *against* FORBES of Culloden.

The Town of Inverness having adduced witnesses, to prove the quantity of the millstones of their mill, and several objections being made against the Town's witnesses, debated before the Ordinary on the witnesses, and reported to the Lords;

They found that these who were present Bailies, or town officers, could not be witnesses in this cause, which concerned the common good; but that others, albeit members of the incorporation, might be witnesses, though they had been formerly Magistrates or officers, they not being such now; and did also admit a witness who was a present member of the council *cum nota*.

*Stair, v. 2. p. 84.*

No. 74.

The office-bearers in a town not admitted as witnesses for it. One who was in the council was admitted *cum nota*.

1673. December 18. THOMSON *against* CORBET.

Corbet of Towcourse pursues a reduction of a decret at his instance against Hardray, *in anno* 1656, before the Commissioners for administration of justice, wherein this point was debated, that it being referred to the oath of Hardray, who was executor to Towcourse's mother, and married his sister, that Towcourse had paid to his mother £800 Scots. Hardray deponed that he was eye-witness to the delivery of that sum; but it being alleged, that an executor's oath could not prove against the legatars, whereupon it was not sustained; which was alleged unwarrantably done as to this point, that there being two universal legatars, whereof one is the executor's own daughter, as to his daughter's interest the father's oath should be sufficient; or at least the daughter being now come to age, should be examined upon her oath of credulity, whether she believes her father's oath to be true.

The Lords found the executor's oath, albeit the father, was not a sufficient probation against his daughter, being but the testimony of one who in this case was not a party, but a witness; but appointed the daughter and her husband to depone, whether they knew that this sum was paid by Towcourse to his mother or not, and that her father's oath should be produced to her as a ground of her knowledge.

*Stair, v. 2. p. 243.*

No. 75.

Effect of the testimony of an executor.

1675. July 21. WILKIE *against* MORISON.

Agnes Wilkie having pursued Christian Morison as heir to her husband, for aliment of her child, mournings, and funeral expenses; in which the defender alleged compensation, because the pursuer intromitted with a furnished bed be-

No. 76.

Women were not admitted to prove the lending of a