

1701. June 24.

ERSKINE *against* ERSKINE.

No. 120.

Effect of taking money from an unknown person, with a recommendation of one of the parties.

In an action pursued by John Erskine and his mother, liferentrix of some lands, against Erskine of Pittodry, his eldest brother, two witnesses being adduced to prove his possession, it was objected against them by Pittodry, that they could not be received, because they had got money in the cause; and they being interrogated thereupon, confessed, that when they were coming from home towards Edinburgh to be witnesses, in obedience to the citation they had got, there came a man unknown to them, and gave each of them half a dollar, and said he wished John Erskine, the pursuer, well, and hoped they would do the like; which was urged as sufficient to cast them from being witnesses. Answered, They were both tenants to Pittodry, the defender, and only knew best the point of possession to be proved; and this was done of purpose to deprive the pursuers of their sole mean of probation, and it is presumed the person who gave them the money has been sent of purpose by Pittodry to make them inhabile, *et suus dolus nemini debet prodesse*; and the tenants do so far collude with their master, that they are willing to be cast, that so their master may win the cause. Some urged, though this looked very like a contrivance, yet it could only be proved by Pittodry's oath, that he sent that person or knew of it. Others thought the witnesses not ingenuous in that part, that he was an unknown man, and that they should yet be more strictly examined anent him, and might be threatened with imprisonment if they would not tell, seeing their taking of money from one they knew not was a fault, not being given for their expenses, but to favour one of the parties: But the Lords considered, if such a practice, if past by, might lay a foundation to cast witnesses, and the party using this stratagem may gain the cause, therefore they appointed the Ordinary to make farther inquiry for discovering if there was any trick in the case, and then they would determine whether to reject them, or to receive them *cum nota* or simply; seeing the money given was but small and inconsiderable, and there might be a *penuria testium*, in the case.

At last the Lords received them *cum nota*; but in respect of their taking money from an unknown person, with a recommendation of one of the parties, and an insinuation how to depone, they put them both in prison.

Fountainhall, v. 2. p. 116.

1701. June 27.

HOPE *against* GORDON.

No. 121.

Ultronous witness.

In the process of sale of the estate of Baleolmy, and the mutual complaints of battery betwixt Sir William Hope and Mr. William Gordon; Sir William adducing a witness, it was objected, against him, that he as ultronous, in so far as it was offered to be proved, that on a letter or message sent to hm by Sir William or his Lady, he came from Fife to Edinburgh, in order to receive a citation; and