

1744. *February 21.*SIR PATRICK MURRAY *against* His GRANDFATHER'S TRUSTEES.

No. 172.

A witness
may be ex-
amined on in-
terrogatories,
though his
answers may
involve him-
self in a
malversation
in his office.

The present Sir Patrick Murray of Ochtertryre brought a process against certain persons, libelling, That the late Sir Patrick his grandfather had vested a considerable money-estate in the defenders as trustees, for the behoof of the pursuer, to be applied to the particular uses and purposes therein mentioned; and that the said trustees had, contrary to their trust, by an unlawful combination with the deceased Sir William Murray the pursuer's father, who, by the settlement, was excluded from any interest in this money-estate, destroyed the said settlement, whereby Sir William had access to uplift and squander the money, whereof the defenders got a part as the reward of their breach of trust.

The pursuer having got information that this settlement had been registered by the granter in the Sheriff-court books of Perth, and that after his death the principal had been got up from the register and delivered to Sir William; Patrick Murray of Dullary, the Sheriff-clerk, was upon this last fact called as a witness.

Dullary objected to certain interrogatories, particularly to the following: If he had seen the extract of the settlement in the hands of the deceased Sir Patrick Murray? Who it was that signed said extract? And whether he knew in what manner the principal had been taken from among the warrants of the Sheriff-court? upon this ground, That he was not bound to answer questions that might involve himself in a malversation in his office,

The Lords "Repelled the objection."

It was laid down as a rule, that no objection made by a witness against his own deposing was to be sustained, except where the fact put to him might infer infamy; and accordingly, in exhibitions and other cases, witnesses are every day examined upon facts which may infer against themselves fraud and damage.

Kilkerran, No. 6. p. 597.

* * * C. Home reports this case:

The deceased Sir Patrick Murray of Ochtertryre made a settlement of his money on trustees, for certain purposes. After his death the same was destroyed, whereby his son got access to his money, which he squandered, whereupon Sir Patrick Murray, the grand-child, brought an action against the trustees, as having, contrary to the trust reposed in them, entered into an unlawful combination with the pursuer's father, to destroy the settlement, upon agreements, by which they themselves were to have a share. In the course of this action, Murray of Dullary, Sheriff-clerk of Perth, was adduced for a witness, and certain interrogatories given in for the pursuer, such as, Whether the settlement was given in to the Sheriff-clerk to be registered, and at whose desire it was given in? And, Whether he saw any extract of it, and with whom he saw it?

Objected by the witness, That he was not bound to answer these questions, as his answers might involve himself in a malversation in his office ; that it was against the rules of law, that any man upon oath should be obliged to answer, what might bring either stain or punishment upon himself, or subject him to a penalty of forfeiture ; that, as the witness was Sheriff-clerk, and keeper of the records, if the case should happen that he was to depose any of the warrants of the records were given up, then he came to be liable and subject to censure. No. 172.

Answered : That the pursuer hoped the witness had done nothing in his office but what he could justify : That there was no prosecution against him of any kind : That facts within his own knowledge were material for the pursuer in this process ; and that if a witness, by pretending his answers might hurt himself, could evade an examination at the instance of the pursuer against third parties, it would be a standing screen for every witness who might be called to tell the truth. The witness had deputies, consequently the extract might be taken out, and he not guilty : He might have other justifications ; but his standing mute, and refusing to answer, was taking guilt to himself. That the questions were not directed upon the witness, Whether he gave up the warrant or not ? but, Whether the settlement was given in to the Sheriff-clerk's to be registered, and at whose desire ? and if such objection were to be gone into, it would be attended with great inconveniences.

The Lords repelled the objection.

C. Home, No. 260. p. 418.

1744. February 28. M'ILHOSE against REID.

Creditors who had concurred in an alleged agreement to accept a certain proportion of their debtor's effects in full of their debts, were admitted as witnesses to ascertain the existence of that agreement. No. 173.

Kilkerran. C. Home.

* * This case is No. 196. p. 12389. *voce* PROOF.

1744. July 18. CAMERON against LAWSON.

Found that a wife was an inhabile witness in an affair regarding her husband. No. 174.

In the same case a boy past fourteen years of age was admitted as a habile witness against his father.

Kilkerran.

* * This case is mentioned in No. 171. p. 16750.