

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.*

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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.

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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.