

sentment : And in support of this Sir George Mackenzie's authority was cited, Tit. Deforcement, Numb. 5. where he says, That a messenger is not admitted in a deforcement to prove an injury done to himself; *2do*, It was objected, That the messenger had given partial counsel, he having wrote a letter to Ascog's doer, informing him of the affair, and advising that a complaint should be made in order to procure him assythment and damages; *3tio*, That he might be a gainer in the cause, as the person entitled to the damages. No. 157.

It was answered, *1mo*, That this was not an action of deforcement pursued either by the King's advocate or the party injured, but a summary complaint at Ascog's instance upon reiterated acts of oppression and violence: And Sir George Mackenzie in the place cited adds, that this is an arbitrary question; and in this case the messenger was a necessary witness; *2do*, The letter mentioned could not infer partial counsel, it containing only an account of what passed, but did not tend to instigate Ascog to make his complaint; nor was the messenger present at any consultation with Ascog upon this head, nor ever offered to depone in his favours, from which circumstances only partial counsel could be inferred; *3tio*, The messenger could not be gainer, since the complaint was at Ascog's instance, and concluded damages and expense to him only.

The Lords repelled the objections, and allowed the witness to be received.

Act. Jo. Macleod.

Alt. Arch. Stewart.

Reporter, Lord Polton.

Edgar, p. 52.

1728. July. MARJORIBANKS *against* TROTTER.

No. 158.

The Lords, in re antiqua, et ubi erat penuria testium, allowed women witnesses to be received to prove a propinquity in order to a service. See APPENDIX.

Fol. Dic. v. 2. p. 430.

1730. June. MURRAY *against* SMITH.

No. 159.

A woman having raised a declarator of her marriage with a certain person then defunct, in order to have the benefit of the legal provisions, the Lords refused to sustain the naked testimony of two women witnesses offered for the pursuer to prove the solemnization of the marriage, unless further adminicles could be condescended upon. See APPENDIX.

Fol. Dic. v. 2. p. 530.