

do, because he alleged that his protocol book was burnt in his chamber in Kelso, when Kelso was first burnt, and that he could not remember perfectly what the instrument contained; therefore the Lords admitted to the said Patrick to prove by witnesses the burning of the said protocol and the tenor of the instrument; and that it was whole, and not vitiated by them that had it, and show the same to that effect, that the notary might be compelled to give furth a new public instrument.

No. 6.

*Sinclair MS. p. 27.*

1542. March 15. LAIRD OF PITBLADO against M. JOHNE SPENS.

No. 7.

Albeit the servand, or ony man, may not be witness for his lord or master; nevertheless his lord and master may be witness in ony cause for him that is presentlie, and at the samin time his man or servand.

*Balfour, p. 377.*

1544. March 20. ALEXANDER ADAMSOUN against JOHN JOHNSTOUN.

No. 8.

Thir persounis may be repellit fra passing upon assise, or beiring of witnes, viz. he that is partner with the partie that sould produce the witnessis; he that is hyrit and conduit throw neid, profit, and winning; he that is the partie's deidlie enemie, and so; *Leg. Burg. C. 143. De Except. C. 17.* Because inimitie and feid standand betwix the partie and the persoun that is callit to be witness aganis him, is a sufficient cause to repel him fra beiring of witnessing. Nevertheless, gif lawborrowis being found be ony persoun to ane uther, and it happin him quha fand the samin, efter the finding thair of, to be summoundit and chargin be ony of our soverane Lord's liegis, to beir teill and suithfast witnessing in ony action or cause aganis him to quhom the samin was fund, he on na wayis sould be repellit, bot sould be admittit as witness, notwithstanding that he is under lawborrowis to him; because the samin was fundin befor that he was sommondit to beir witness in the matter.

*Balfour, p. 378.*

1550. February 5.

A. against B.

No. 9.

In an action for delivering of an obligation, for proving thereof was an instrument produced; to the which were only three women witnesses, which was thought insufficient, because there was no man inserted therein.

*Maitland MS. p. 104.*