

No 4.

1555. *March 17.* LETHENTON *against* LAIRD OF KIRKSTORPHON.

ALL *curatores ad negotia* may be no Judges nor witnesses in ane action pertaining to them that they are *curatores* to, howbeit that there be uther *curatores ad lites*.

*Fol. Dic. v. I. p. 230. Maitland, MS. p. 119.*

No 5.

An inferior judge's decree being reduced on the head of iniquity, the party, at whose instance the reduction was obtained, was found thenceforth exempted from the jurisdiction of that judge, in all other causes.

1561. *February 6.* JOHNE SCHELL *against* JOHNE GUELAD.

Gif ane Schiref, or uther inferior Judge, gevis ane decreit aganis ony persoun, the quhilk, thairefter, at the samen persoun's instance is reducit and declarit to have bene wrangouslie gevin aganis him, he sould be exemit fra the jurisdiction of the said Schiref or Judge in time to cum, in all uther causis and actionis pertening to him.

*Fol. Dic. v. I. p. 229. Balfour, (ADVOCATION.) No 5. p. 341.*

1591. *August.*COLUTHIE *against* FINGASK.

No 6.

Some of the Lords of Session being chosen arbiters in a cause, may nevertheless sit and vote with the other Lords, in the execution of the decree-arbitral.

THERE was a submission of certain debates and quarrels betwixt the Laird of Coluthie, on the ane pairt, and the Baron of Fingask, who made a certain number of the Lords of Session, viz. three to every partie, and in case of variance, the chancellor to be oddsman and oersman.—The decret being given be the chancellor, because the Judges arbiters could not agree, thereafter Coluthie socht the decret to be registrate. It was *opponit* againes the registration, That all the persons who wer chosen to be arbitrators, could not be Judges, but aught to be removit, as they who had given partial counsall, as was practised sundrie tymes of before. It was *answerit*, That albeit there was certain number of the ordinar Judges of the Session that were chosen *arbitri aut arbitratores obligantibus*; yet now when the registration and execution of the thing was decernit, the self same persones might be Judges *quia aliud est arbitrium, aliud iudicium*; for utherwise the decret arbitral sould skairsely take effect, for such a great number of Lords being declynit, there would not rest behind to make furth the ordinar number. THE LORDS repellit the declinator, and fand the decret arbitral sould be registrate.

*Fol. Dic. v. I. p. 230. Colvil, MS. p. 471.*