

the rest several women ; against whom it was objected, that they were not habile witnesses by law. It was answered, That they were habile in domestic matters, and have been received in things of greatest importance, as bearing of a child, and the liveliness thereof, as being able to weep.

No. 82.

The Lords ordained the mistress to be examined upon oath, in presence of other women witnesses ; but if the husband used his privilege in refusing his wife to depone, the Lords would consider the bill, whether they would admit women as witnesses *ex officio*, or not.

Stair, v. 2. p. 648.

1678. November 29. BAILIE OF FALKIRK.

No. 83.

Queried if the regality of Falkirk's officer might be a witness for the Bailie. The Lords found he might, if he depended upon the Lord of regality for his out-putting, and not on the Bailie ; yet the Lords refused my Lord Nithsdale's officer *cum nota* in his cause with the King's vassals of Duncow.

Fountainhall MS.

1679. January 15. BROWN *against* TOWN OF KIRKCUDBRIGHT.

No. 84.

Brothers-in-law are refused as witnesses, unless when there is *penuria testium*, and then *cum nota*.

Fountainhall.

* * This case is No. 110. p. 10847. *voce* PRESCRIPTION.

1679. January 17. HALTON *against* The TOWN OF DUNDEE.

No. 85.

In Halton, treasurer-depute, his cause against the Town of Dundee, the Lords refused to admit as witnesses such burgesses as were sworn to advance the good of the Town by their burgess oath, (this, it may be, will not extend to the *cives honorarii*,) because it is presumed they will be partial, though it be not *in re propria*, but *in materia universitatis*. Some affirm, (and I heard the President say it,) that they rejected no burgesses to be witnesses, but only the Magistrates. It is well known that citizens have been frequently received in such cases before. The distinction of the Doctors, and interpreters of the Roman law is, *Si tangat cives ut universos*, (as in matter of privileges,) then burgesses may be witnesses ; but if it concern them *ut singulos*, as if it be in the case of a commonty, where every burgess

In what cases burgesses may be witnesses relative to the affairs of the Town.