

1786. December 19. HELEN SCOTT *against* JERDON CAVERHILL.

The deceased Archibald Jerdon executed a general settlement of his effects, in favour of Jerdon Caverhill, to the exclusion of Mrs. Helen Scot, his legal heir. The deed was framed by Mr. Cornelius Elliot, writer to the signet, who also witnessed the execution of it. He was likewise named one of the trustees for carrying the settlement into effect. And when Mrs. Scott commenced an action for setting it aside, as having been obtained from Mr. Jerdon while in a state of dotage and mental incapacity, he was employed as agent for the defender.

The defender having proposed to examine Mr. Elliot with regard to the execution of the deed, the pursuer objected; and

Pleaded: No person ought to be examined as a witness who may justly be suspected of having conceived a partiality for one of the parties, or who may gain or lose by the issue of the dispute. Hence, not only tutors and curators, in the causes of their wards, but also advocates and agents, have been excluded from giving evidence in those questions in which they are professionally employed. Stair, Book 4, Tit. 44. § 9.; Ersk. Book 4, Tit. 2. § 25.

Answered: A distinction is to be made between those occurrences which fall under the observation of many persons, and circumstances which from their nature can be known only to a few. As to the former, every reasonable cause of distrust may be allowed to have its full influence; but with respect to the latter, of which the present case affords an example, it would be highly unjust, if a slight suspicion were altogether to disqualify a witness, whose integrity is unquestionable, and whose grounds of information, with regard to events of the utmost importance, must be so peculiarly good. Stair, Book 4, Tit. 44. § 10.; 21st November, 1749, Earl of March against Sawyer, No. 180. p. 16757.; November 27, 1771, Maclatchie against Brand, No. 200. p. 16776, decided in the House of Lords, March 22, 1773.

The Lord were at first inclined to sustain the objection; but after a consideration of the later decisions, they unanimously admitted the testimony of Mr. Elliot.

Lord Ordinary, *Dunsinnan*.
Alt. *Wight, E. Armstrong*.

Act. *Solicitor General, Honyman*.
Clerk, *Robertson*.

Eas. Coll. No. 298. p. 461.

No. 204.

A witness, otherwise inadmissible, examined concerning a transaction, the circumstances of which he had peculiar opportunities of knowing.