

No. 209.

of 2s. 6d. Sterling for each travelling day, and at the rate of 1s. 2d. Sterling for each of the two days he was detained in Edinburgh, amount to the sum of £1. 17s. 4d. Sterling; found the respondents liable to the petitioner in that sum, and of £5. Sterling of expenses of process, and the full expenses of extract."

Lord Ordinary, *Abercromby*. For Gordon, *D. Cathcart*. Alt. *Turnbull*. Clerk, *Pringle*.
D. D. *Fac. Coll. No. 137. p. 312.*

No. 210.

The defender, in an action of divorce, cannot adduce her mother, brother, or sister, as witnesses.

1797. *January 21.*JAMES BELL *against* ISOBEL KING.

In an action of divorce, at the instance of James Bell, against Isobel King, she proposed to adduce her mother, brother, and sister, as witnesses. She wished, in particular, to disprove a material circumstance, sworn to by a single witness for the pursuer, which she alleged to be false, and her brother was the only person who had access to know it to be so.

The pursuer having opposed the examination of these witnesses, the Commissaries "sustained the objection."

The defender presented a bill of advocacy against the judgment, which the Lord Ordinary took to report.

The Court thought the interlocutor of the Commissaries right. The opinions delivered were the same in substance with those stated in the report, 10th July 1790, Dalziel against Richmond, No: 205. p. 16780. It was also observed, that the fact which the defender was desirous of disproving by her brother's evidence being sworn to by one witness only, could not materially injure her cause.

The Lords unanimously refused the bill.

Act. *Solicitor-General Blair, G. J. Bell*. Alt. *Fletcher*. Clerk, *Menzies*.
Fac. Coll. No. 12. p. 24.

No. 211.

A witness found to be admissible, although, while in the service of the party by whom he was adduced, and before his citation, he had drawn up, at his master's desire, and delivered to him, a state-

1798. *February 10.*THOMAS DURHAM *against* THOMAS MAIR.

Thomas Durham brought an action against Thomas Mair for defamation, in which the latter adduced as a witness, Alexander Wardrop, formerly his clerk, who being examined *in initialibus*, deposed, "that before he left the defender's service, and long before he received any citation as a witness, he drew up a paper containing an account of all the facts which he knew with regard to the cause, and likewise of other particulars which did not come within his knowledge, and that he signed the paper at the desire of the defender, and delivered it to him and has not seen it since."

The writing alluded to having been produced by the defender, it appeared, that although written by the witness, it was not signed by him, as he had erroneously stated.

The pursuer contended, that the circumstances sworn to by the witness rendered him inadmissible.

The Commissaries, "in respect of the testimony of Alexander Wardrop *in initialibus*, found him disqualified from being a witness in this cause."

The defender, in a bill of advocation, stated, that the writing had been drawn up by Wardrop, merely in the capacity of his clerk, for the purpose of being sent to his agent in the cause, and that he had no objection to its being destroyed, before the witness was further examined; and

Pleaded: A party must necessarily inquire at those who are to be cited as witnesses, what they know of the facts in the cause; and the circumstance of Wardrop's having afterwards reduced them into writing, especially as it arose from his being then the defender's clerk, cannot render him inadmissible.

Answered: The defender, by giving Wardrop the information necessary for drawing up the paper, has communicated to him the manner in which he is to shape his plea, and how he expects the evidence of this witness to bear on it. But the law is so anxious to prevent this knowledge on the part of witnesses, that it is an undoubted objection, that a witness has heard another examined, whereas Wardrop knows precisely the import of the whole evidence which the defender means to bring forward, 4th August 1778, Bogle against Yule, No. 201. p. 16777; 10th August 1785, Fall against Sawers, No. 202. p. 16777; Erskine, B. 4. Tit. 4. §. 84, 86.

The Lord Ordinary on the bills having taken the point to report on memorials,

The Lords unanimously repelled the objection.

Lord Ordinary, *Craig*.

For the Pursuer, *Williamson*.

Alt. *Robertson*.

Fac. Coll. No. 62. p. 142.

1798. June 26. THOMAS HAY MARSHALL *against* ROSE ANDERSON.

Thomas Hay Marshall brought an action of divorce against Rose Anderson his wife for adultery, alleged to have been committed with a nobleman and another gentleman.

After the pursuer's proof was led, the defender proposed to adduce them as witnesses, each with respect to his own alleged criminality.

This was objected to by the pursuer, and the Commissaries sustained the objection, "in respect of the proof already adduced."

In an advocation, the pursuer contended, that his proof completely established the guilt of the defender; while she alleged, that it amounted, at most, to circumstances of suspicion, which the persons whom she proposed to adduce would be able satisfactorily to explain, without imputing perjury to the witnesses already examined; and the general question occurred, Whether persons so situated can be admitted as witnesses for the defender?

No. 211.
ment of all
the particu-
lars which he
knew respect-
ing the cause.

No. 212.
In a process
of divorce
brought by a
husband for
adultery, is
the alleged
adulterer a
competent
witness for
the defender,
with regard
to the wit-
ness's own
criminality?