

whom it was objected, They were inhabile by law to extinguish debts and civil rights, however they might be allowed to prove a riot; and he can never pretend to have been dispossessed, seeing he was never in possession of that house, in regard his father having given him off a part of his estate, he had riotously mispent the same, which made the father dispoise the rest of his estate to his second son; and *esto* he had been thrust out of the house, and Sir Thomas, with other friends, had inspected the writ; where lies the presumption, that therefore he abstracted the instructions of his own payments? But the truth was, they were sealed up. Answered, The circumstances are such as require expiscation by all sorts of witnesses; for beating and violence is libelled to have been done under cloud of night, and at his father's door and close; who could see this but the domestic servants then about the house? And by the witnesses already adduced, it is proved, that one of Sir Thomas Kennedy's sons stood at the door with a drawn sword, and pulled off Craigcaffie's wig when he offered to return. The Lords finding it was *in re domestica*, and under night, and to prove acts of violence, they allowed the women witnesses to be received.

Fountainhall, v. 2. p. 542.

1711. February 7.

CAMPBELL *against* FARQUHAR.

No. 142.

It being objected against a witness, that the adducer had got bond for a sum of money from the witness, whom he had under diligence for it, which impression might bias him to be partial; the Lords repelled this objection.

Fountainhall.

* * * This case is No. 186. p. 12082. *vide* PROCESS.

1711. November 16.

WILLIAM ARMSTRANG in Bogside, and JOHN IRVING of New-orchyard, his Master, *against* JOHN SHARP of Hoddam and his TENANTS.

In the process of spuilzie at the instance of William Armstrang and his Master, against Sharp of Hoddam and his Tenants, a conjunct probation being allowed to both parties. The pursuer objected against Archibald Currie produced as a witness by the defender, That he could not be received, because both the pursuer and he had sworn judicially before the regality court of New Dalgarno, that each of them dreaded malice, ill-will, and bodily harm of other, whereupon both were put under law-burrows to keep the peace.

Answered for the defender: Archibald Currie's being under law-burrows at the pursuer's instance, is no argument that the former bears bodily malice against the latter; law-burrows being used, not out of malice, but as a legal remedy to defend against oppression; and suppose the witness might fear oppression from the pursuer, that doth not argue that he hates him; seeing our Saviour commands.

No. 143.

One of two persons under mutual law-burrows received as witness against the other, the former purging himself by oath against the other.