

their evidence may tend to make them liable in high penalties for the fraud committed.

No. 195.

Answered: Though they are defenders in the conjoined processes; yet their evidence in the one case will not be evidence in the other.

They can neither gain nor lose by their evidence in this case; because they are liable either to Christie or to Muschet for the price of the skins; and it is a matter of no consequence to whom they are found liable.

Though they may gain or lose by the cause; yet such witnesses are received in many cases. The owner of goods stolen is a good evidence when the prosecution is at the instance of the Crown, for theft; and yet his oath, so taken, may have some weight in the after question, Whether the goods shall be restored to him? In the same manner, the evidence of an inn-keeper is admitted in the prosecution of the person who robbed his house, though it may have the effect to free him from the action on the edict *Nautæ, Caupones*.

The inferior Court refused to admit of their evidence.

“ On an advocacy, the Lords remitted the cause *simpliciter*.”

For George Muschet, *Walter Stewart*. Alt. *Macqueen*. Clerk, *Justice*.

J. C.

Fac. Coll. No. 190. p. 340.

1764. January 25.

SIR ROBERT POLLOK of Pollok, Supplicant.

In a petition concerning a proof, in a question between Sir Robert Pollok and the feuers of Mearns, he, *inter alia*, represented, That John Roger in Callory, one of the witnesses, had, some years ago, contracted an impediment in his throat, which rendered his articulation so indistinct, as to be understood only by those who daily conversed with him: That, though it was thought the Commissioner, in this case, could swear an interpreter, in the same way as when a witness cannot speak English; yet, to avoid any dispute, he prayed the Court specially to authorise the Commissioner to do so.

“ The Lords granted the desire of the petition.”

For the Petitioner, *Lockhart*.

J. M.

Fac. Coll. No. 129. p. 305.

1766. March 11. HUNTER against ROBB, &c;

A petition being given in to the Court against those who were elected magistrates and councillors of the burgh of Anstruther-wester the Michaelmas preceding, complaining, that the election was procured by bribery and corruption, the magistrates and councillors denied the charge; and at the same time, by way of recrimination, insisted, that the complainers had been guilty of bribery and cor-

No. 196.

Commissioner for taking a proof, allowed to swear an interpreter in examining a witness, who, from indistinctness of articulation, could be understood only by those who daily conversed with him.

No. 197.

In a complaint for an undue election of magistrates and councillors, who are habile witnesses?

No. 197. ruption. A proof at large was allowed to both parties; and Margaret Brown, daughter to John Brown one of the Bailies, being offered as a witness for the respondents to prove against the complainers that they had been guilty of bribery; the objection of her being daughter to one of the respondents was repelled, and she was allowed to be examined as to all matters which did not tend to exculpate her father from the complaint. In a reclaiming petition it was set forth, That where a town is divided into two factions in violent opposition against each other, each party having a common interest, may justly be considered as one body; and therefore that a witness who is inhabile with respect to any one of the body, must lie under a great suspicion with regard to the whole. The zeal of a party in matters of this kind, is never confined to the precise members who compose the party, but always spreads through their relations.

It was accordingly found, That as it was incompetent for the petitioners to prove their complaint by their own relations, it was equally incompetent for the respondents to prove their recrimination by their relations; and for that reason the interlocutor was reversed, and the objection against Margaret Brown was sustained.

In matters of this kind the rule seems to be, that either party may use as witnesses any of the other party or of their relations; but that it is incompetent for either party to lead as witnesses any of their own party or of their relations; reserving only to them to cross-interrogate such witnesses when led by the other party.

Sel. Dec. No. 245. p. 318.

No. 198. 1770. January 20.

BOYD against GIBB.

In a proof of propinquity to a remote ancestor, the pursuer adduced as witnesses his two aunts, who were objected to as incompetent. Answered: From the nature of the case there must be *penuria testium*, and consequently these witnesses are necessary. The objection was repelled.

Fac. Coll.

* * This case is No. 12. p. 3989. *voce* EXHIBITION AD DELIBERANDUM.

1770. December 6.

HOUSTON STEWART NICOLSON, ESQ. against MRS. STEWART NICOLSON.

No. 199.
Is the adulterer a competent witness upon the part of the pursuer in an action

In the process of divorce Houston Stewart Nicolson against his wife, amongst several other witnesses, it was proposed by the pursuer to adduce William Grahame, an upper servant to Sir William Maxwell, and Latchimo, a negro, also a servant to the same gentleman.