

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.