

On the one side, it was observed, The pursuer and defender ought to be on an equal footing as to the witnesses who may be brought forward by them. The argument for the pursuer takes it for granted, that the guilt of the defender is already established. It would be dangerous to allow a witness to be disqualified, by a mere averment that he is *socium criminis*. It would not be sufficient to establish the objection of infamy against a witness, that there was an action in dependence from which infamy might result.

The alleged connection between the defender and the witness, is one to which the law can pay no attention. A parent and child cannot bear witness for each other; but this would not be the case if the connection arose only from adoption, although the danger of perjury might be the same. In like manner, a husband and wife cannot be witnesses for each other, but this would not hold in the case of a man and his mistress.

The defender is willing to run the risk of the presumption which will arise against her, if the witnesses refuse to depose.

On the other hand, it was said, that although persons in the situation of those now objected to, may be competently called by the pursuer, who thus wayes his objection against them, and virtually discharges his action of damages, yet it would be very dangerous to admit them for the defender, their temptation to perjury being greatly stronger than in any of those cases which have been alluded to. Indeed, as the result of the question of divorce will affect the pursuer's claim for damages, the witnesses are, in some measure, parties to the action, or at least materially interested in the issue of it.

The Lords (15th February 1798) directed the Lord Ordinary to remit to the Commissaries, "with this instruction, that they sustain the objection to the admissibility of the two witnesses."

And upon advising a petition, with answers, they adhered.

Lord Reporter, *Cullen*. Act. *Tait, Jo. Clerk, T. W. Baird*. Alt. *Erskine, Ar. Campbell, junior*.  
D. D. *Fac. Coll. No. 84. p. 193.*

\* \* \* These judgments were reversed on appeal.

1799. January 19.

JOHN CADELL against Mr. JOHN MORTHLAND and JOHN JOHNSTONE.

In the cause No. 170. p. 12375. George Aitken, who had formerly been employed in the office of the Scots Chronicle, was cited as a witness for the pursuer. When he was about to be examined, it was stated for Mr. Morthland, as an objection to him, that he had been turned off from the office for malpractices, and imputed his being so to the advice of the defender, so that he could not be considered as impartial; and it was agreed that the examination should be delayed, till the matter

No. 213.

Objection to a witness sustained, that after his citation, the agent for the person adducing him had

No. 213.  
spoken to  
him on the  
cause, and  
mentioned to  
him an impu-  
tation on his  
character  
which had  
been stated  
by the other  
party.

should be inquired into. Upon this the agent for the pursuer told the witness, who was waiting in another room, that this objection had been stated, and held some other conversation with him on the subject of the cause. And when this conduct of the agent afterwards came out in the examination of the witness *in initialibus*, it was stated as a bar to his admissibility.

The Commissioner made *avisandum* with the objections, answers, &c. to the Court, who, (though they acquitted the pursuer's agent of all bad intention) had no doubt of the objection, and found Aitken could not be examined *hoc statu*.

Lord Ordinary, *Methven*. Act. *ut supra*. Akt. *H. Erskine, Jo. Clerk*. Clerk, *Home*.

*D. D.*

*Fac. Coll. No. 102. p. 238.*

Depositions how to be subscribed; See WRIT.

Instrumentary Witnesses; See WRIT.

See APPENDIX.