

No. 177.

1747. *June 16.*GORDON *against* GORDON.

Gordon younger of Balledgarno pursued a proving the tenor of a disposition, in virtue whereof he claimed the said estate, to which otherwise his father would have succeeded, and offered to adduce as a witness his sister, to prove a conversation between her father and her, owning him to have had the paper in his possession.

Objected, That she could not be examined, as being sister to the adducer; to which it was answered, Her relation was nearer, as being daughter to the defender.

The Lords were dubious; but observing that there were several old decisions in favour of the objection, and that there did not appear any since, in which the contrary determination had been given, they sustained it.

D. Falconer, p. 251.

1748. *March 5.* CUMING *against* CUMING her HUSBAND.

No. 178.
A witness related to the adducer was repelled, though nearer related to the objecter.

In a process by a wife against her husband for separation and aliment, on account of maltreatment, she was allowed to adduce their common children as witnesses; not because they were the same relation to both parties, which were no good reason, but because they were necessary witnesses *in re domestica*.

Kilkerran, No. 9. p. 599.

* * * D. Falconer reports this case :

Mrs. Cuming insisted against her husband, a brewer in the Canongate, for a separation on account of maltreatment, and having adduced as witnesses the servants who from time to time were in the family, offered to adduce their common children, because for a considerable time he would keep no servant, during which he had maltreated her in the presence of the children, who therefore were necessary witnesses.

The Commissaries allowed the children to be examined, and the Lords refused a bill of advocation.

D. Falconer, v. 1. p. 334.

1748. *July 20.*

STRANG *against* STRANG.

No. 179.
A witness within the forbidden degrees to both parties.

The objection to a witness adduced by the defender, in an improbation for proving his approbatory articles, that he was within the forbidden degrees to the adducer, was sustained, notwithstanding the answer, That he stood in the same relation to the pursuer; as had been formerly done, Jan. 24. 1744. A. against B. No. 170. p. 16749.