

No 187. ed is against the initials, shewing the witness had malice; and though that is a disposition of the mind, it is to be collected from the outward behaviour; and the condescence clearly imports it: There is offered to be proved a continued course of horrid imprecations, a perseverance in affirming the defender had killed her daughter; and the addition made to the initials of her testimony, was giving a vent to that rancour she entertained; not a charitable prayer.

The Lords repelled the reprobator.

Act. Lockhart

Alt. W. Grant.

Clerk, Murray.

D. Falconer, v. 2. p. 284.

1752. June 18.

GOVAN against YOUNG.

No. 188.

The objection to a witness sustained, that he had been employed as lawyer in the cause.

This day the Lords, on the verbal report of an Ordinary, agreeable to their former practice, sustained the objection made by Govan to Mr. James Burnet advocate, adduced as a witness for Young, That he was his lawyer in this cause, and had actually drawn the condescence on which the witnesses were to be examined; and that although the fact, with respect to which he was to be examined, had happened long before his being employed as a lawyer, a circumstance on account whereof some of the Lords were for repelling the objection.

But the Court were of opinion, that if this distinction should be admitted, we might throw the objection of giving partial counsel out of our law books. And as for the judgment of the House of Peers in the case between the Earl of March and Anthony Sawyer, which *vide supra* Nov. 21, 1749, No. 180. p. 16757. it was a special case, and did not affect the general point.

Kilkerran, No. 6. 304.

1752. ————

GRAY against ————, and BARONY of TILLIBOLE against ————.

No. 189:

Where more persons are pursued, *super eodem medio*, every objection to a witness, which renders him inhabile for any one of the defenders, renders him also inhabile for all the rest.

Where more persons pursue or are pursued *super eodem medio concludendi*, an objection made to a witness for any one of the defenders is likewise sustained to cast him from being a witness for any of the rest.

And so it was found in the case of William Gray against certain inhabitants of the Town of Rutherglen, whom he pursued for the expense of a process in which they had employed him as agent, and became jointly and severally liable for his payment; and they having alleged certain facts, and among other witnesses for proving thereof, offered to adduce the brother of one of the defenders, who was pleaded to be a *habile* witness, at least for the other defenders, the Lords refused to admit him.

The same thing was done this Session in another case. In a declarator of ascription of the barony of Tillibole to the Creek-mill, the custom of the barony was libelled as being to pay two lippies for the boll of sheilling, one to the miller,

the other to the multurer, which the defenders averred to have been only one lip-
py for both; the Commissioners for taking the proof having referred to the Lords
an objection made for the pursuer to certain witnesses adduced for the defenders,
That they were within the prohibited degrees to some of the possessors of the
barony, and therefore could not be received as to any of the possessors thereof,
the defenders, applied by petition, praying for a direction to the Commissioners
to repel the objection to the witnesses, so far as concerned such of the defenders
as stood in no relation to the witnesses.

The Lords, on advising this petition, with the answers, "Sustained the objec-
tion as to the whole defenders."

In both cases, the objection was considered as indivisible, and that the defenders
might as well adduce one another, as adduce a witness within the forbidden de-
grees to any of them.

Kilkerran, No. 17. p. 603.

1752. December 19. DR. PARK *against* DALRYMPLE.

Dr. Park brought an action upon the passive titles against Elizabeth Dalrymple,
his wife's sister, for medicines furnished to her deceased father, and fees for at-
tending him. He offered proof of the furnishings and visits; and among other
witnesses, produced the widow of the deceased.

Objected: That the witness was the pursuer's mother-in-law, and therefore
could not be received,

Answered, *1mo*, The witness was also the defender's mother; and so, being
equally related to both parties, there was no fear of partiality; *2do*, She was a
necessary witness.

Replied, *1mo*, Equal relation to both parties does not take off the objection of
relation; *2do*, The furnishing of medicines, and visits of a physician, are open and
voluntary acts, and are easily proved; therefore the widow was not a necessary
witness.

"The Lords sustained the objection."

Act *Geo. Brown.*

Alt. *Boswel.*

Clerk, *Forbes.*

Fac. Coll. No. 48. p. 72.

1755. February 28. BETHIA YULE *against* JOSEPH YULE.

John Yule being eighty years of age and a batchelor, lent out two sums upon
bonds, taking the securities to himself; and failing himself, to his brother Joseph
Yule, his heirs, executors, or assignees.

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No. 189.

No. 190.

A witness
liable to be
set aside,
because of
proximity of
blood to one
of the parties,
cannot be
received,
though he is
of the same
relation to
the other
party.

No. 191.

A tutor ad-
mitted as
witness for
his pupil.