had been received. The Court, on the 19th of January 1819, 'Having heard counsel, in terms of their former interlocutor, 'as well upon the bill of exceptions as upon the motion for a 'new trial, they disallow the exceptions for a new trial, and de- 'clare the verdict conclusive.' * No appeal was entered against this interlocutor in relation to the disallowance of the bill of exceptions within fourteen days, in terms of the statute; and the case then returned to the Lord Ordinary, who, in respect of the verdict, assoilzied Ross, and found him entitled to expenses. Against this interlocutor M'Kenzie did not present a petition to the Inner House, but entered an appeal to the House of Lords, on the same grounds on which he had moved for a new trial. To this it was answered, that the appeal was incompetent—1. Because, so far as regarded the disallowance of the bill of exceptions, it ought to have been entered within fourteen days, which had not been done; and that, so far as regarded the motion for a new trial, as it had been refused, the verdict was final, and not liable to be questioned any where. 2. That as the interlocutor of the Lord Ordinary had not been reviewed, the appeal was further incompetent in terms of the 48. Geo. III. c. 157, § 15; and, 3. That the objections were unfounded on the merits. The House of Lords 'Ordered and adjudged that the interlocutors complain- 'ed of be affirmed, with £100 costs.' †

Feb. 15. 1822.

Appellant's Authority.—2. Dict. p. 218, 219.

FRASER,—J. CAMPBELL,—Solicitors.

(*Ap. Ca. No. 2.*)

JEAN HUMPHRY, Appellant.—*Jeffrey—Brownlee.* No. 24.
JAMES AITKEN, Respondent.—

Proof—Semiplena Probatio—Bastard.—1.—Circumstances in which a criminal intercourse between the mother and alleged father of a bastard, prior to the time when the child must have been begot, held not to amount to a semiplena probatio;—and, 2.—A stepmother held not an admissible witness for her stepdaughter, although the husband had been dead for upwards of sixteen years.

JEAN HUMPHRY presented a petition to the Justices of Peace for Ayrshire, stating that in the end of January 1813 she was delivered of an illegitimate male child, of which James Aitken, a married man, was the father,—and praying that he should be

Feb. 18. 1822.

2D DIVISION. Lord Craigie.

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* Not reported. † See the Lord Chancellor's speech in the preceding case.

Feb. 18. 1822. ordained to pay to her a certain sum of aliment for behoof of the child until it should arrive at the age of fourteen, and relieve her of the inlying expenses. Aitken having denied that he was the father, a proof was taken; on advising which, the Justices allowed Humphry to depone in supplement. Against this, Aitken (after taking an appeal to the Quarter Sessions, which was dismissed) presented a bill of advocation; which having been passed, Lord Craigie, on considering a condescendence and answers, allowed a new proof, 'with this limitation, that the commissioner shall not 'receive as a witness the respondent's daughter, or any other per-'son against whose admissibility there is a legal objection.' To this interlocutor he adhered; and in reference to an objection as to re-examining the former witnesses, he stated in a note, that 'by the restriction contained in the interlocutor, the Lord Ordi-'nary intended to exclude the examination of those persons who, 'like the respondent's daughter, were generally inadmissible as 'witnesses. As to the re-examination of those persons who had 'formerly been brought forward as witnesses, the Lord Ordinary 'at the time was not called upon to give any determination. In 'practice, however, the Court are not so unfavourable to re-exa-'minations as formerly; and although they are not allowed of 'course, especially where the first examinations have taken place 'under the direction of counsel, yet, upon any reasonable cause 'shown, and particularly where the witnesses are to be examined 'as to circumstances which were not formerly in the view of the 'parties, it is not unusual to permit this sort of supplementary 'evidence. This was done in a case which depended before the 'Lord Ordinary, and in which the Court altered an interlocutor of 'his refusing an examination, the party demanding it not having 'given (as the Lord Ordinary thought) a sufficient reason for it. 'The parties were Geddes of Torbanhill and Bailie Masterton of 'Culross. The petition of Mr. Geddes is dated 8th July 1812, '—Mr. Mackenzie, clerk. In this case the commissioner will no 'doubt use his discretion, both in admitting witnesses to be ex-'amined, and as to the subject and extent of the re-examination.' A new proof was accordingly taken, in the course of which the former witnesses were re-examined; and Margaret M'Skimming, the stepmother of Humphry, having been offered to be adduced on her behalf, the commissioner permitted her to be examined, subject to the decision of the Lord Ordinary and the Court. A great deal of contradictory evidence was brought forward as to a familiarity and criminal intercourse between the parties, chiefly in the winter of 1811, (being long prior to the period when the child must have been begot); and it appeared that Humphry had

applied to a medical man to procure an abortion. When the case came before the Lord Ordinary, the objection to Margaret M'Skimming was renewed; and the answer which was made by Humphry was, that her relationship had been dissolved upwards of sixteen years previously by the death of her father. The Lord Ordinary 'sustained the objection to the admissibility of Margaret M'Skim-'ming as a witness,' and assoilzied Aitken. Humphry having re- Feb. 18. 1822.
presented, his Lordship appointed the representation and answer to be printed, in order to be reported, and issued the following note: 'There seems to be some inconsistency in the decisions of 'the Court as to the circumstances in which an oath in supplement 'should be admitted in such questions as the present; and as the 'Lord Ordinary cannot altogether acquiesce in the decision lately 'given in the First Division of the Court, and referred to in the re-'presentation,* his opinion being the same with that which was 'given by Lord President Blair in the case of Craig, he has sent 'this case to the Court in the least expensive form he could think 'of. In this case it appears to the Lord Ordinary, that the evi-'dence of a carnal intercourse between the parties, at a date long 'prior to the begetting of the child in question, (even though it 'were more unexceptionable than it is,) ought not to be held per se 'as a semiplena probatio; and that the pursuer's general habits 'and conduct, as stated by herself, and particularly her having at-'tempted, as she alleges, to procure abortion, are such as ought to 'induce the Court, with great reluctance, to admit her oath in sup-'plement.' The Court, on the 4th of July 1816, 'adhered to the 'interlocutor represented against, and refused the desire of the 'representation;' and thereafter, on the 29th November of the same year, refused à petition without answers.† Humphry then entered an appeal to the House of Lords, on the ground, 1. That Margaret M'Skimming was an admissible witness; and, 2. That the evidence adduced, independent of her testimony, amounted to a semiplena probatio, seeing that a great familiarity and repeated instances of criminal intercourse had been established, so that she was entitled to her oath in supplement. No case was lodged or appearance made by Aitken; but, notwithstanding, the House of Lords 'Ordered and adjudged that the interlocu-'tors complained of be affirmed.'

Appellant's Authorities.—Wightman, Nov. 17. 1807, (No. 5. App. Proof.); Craig, June 14. 1809, (F. C.); Hunter, Jan. 15. 1811, (F. C.); Hunter, May 24. 1814, (F. C.); Colville, Dec. 12. 1812, (not rep.); Thomson, Feb. 1814, (not rep.)

J. RICHARDSON,— —Solicitors.

(*Ap. Ca. No.* 4.)

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* Hunter v. Hunter, May 24. 1814, (F. C.)

† Not reported.