

No. 124. there was no hazard in a bowman, who is less exposed to influence than other menial domestic servants ; 2do, Kilmarnock, the adducer, was willing to give his oath, that he had not put him away *eo animo* to capacitate him, but because he had no more use for him, and that he was a necessary witness ; and Sclater, the witness, was ready to deponè there was neither design nor concert betwixt his master and him. The Lords, in this special case, allowed him to be received, but appointed him to be called on a new citation. Some were only for taking him *cum nota*, because they thought it near to the case of a moveable tenant rejected from witnessing on that head, and his master giving him a tack with design to habilitate him ; which would not be sustained.

Fountainhall, v. 2. p. 186.

1704. July 11.

STIRLING *against* HAMILTON.

No. 125.

A cause was advocated from the Commissaries, who had admitted a father, brothers, and sisters as witnesses, in proof of a private marriage.

Fountainhall.

* * * This case is No. 15. p. 372. *voce* ADVOCATION.

1705. January 5.

ANNE CHALMERS *against* ALEXANDER BROWN, Servant to the DUKE of QUEENSBERRY.

No. 126.
Women witnesses in matters regarding marriage.

Anne alleging she was lawfully married to the said Alexander, he raises a process of scandal and defamation (called by the English lawyers a libel of jactitation) before the Commissaries of Edinburgh, to hear herself discharged from claiming him to be her husband, and a declarator, that he was a free man, and at liberty to marry whom he pleased. To obviate this, she raised a counter-process of adherence, and offered to prove their marriage, and that he owned her for his wife since ; and that she bore him a child, which he caused baptize by the curate at St. Martin's in London, and registrated as lawfully begotten ; and produced a testificate under the hand of Mr. James Cruickshank, Minister, bearing that he had married them in August, 1700 ; and craved he might be examined on the verity of what he attested ; and likewise she adduced one Christian Godskirk who was present at the celebration of the marriage, and craved that both she and the minister might be examined thereupon. Answered, As for Mr. Cruickshank, he has taken such latitudes in-giving antedated testificates in sundry cases of marriage, that no trust can be given to his testimony ; and for canvelling the faith of this produced by Mrs. Chalmers, they produce a bond subscribed a year posterior to the testificate