

No. 209.

of 2s. 6d. Sterling for each travelling day, and at the rate of 1s. 2d. Sterling for each of the two days he was detained in Edinburgh, amount to the sum of £1. 17s. 4d. Sterling; found the respondents liable to the petitioner in that sum, and of £5. Sterling of expenses of process, and the full expenses of extract."

Lord Ordinary, *Abercromby*. For Gordon, *D. Cathcart*. Alt. *Turnbull*. Clerk, *Pringle*.
D. D. *Fac. Coll. No. 137. p. 312.*

No. 210.

The defender, in an action of divorce, cannot adduce her mother, brother, or sister, as witnesses.

1797. *January 21.* JAMES BELL *against* ISOBEL KING.

In an action of divorce, at the instance of James Bell, against Isobel King, she proposed to adduce her mother, brother, and sister, as witnesses. She wished, in particular, to disprove a material circumstance, sworn to by a single witness for the pursuer, which she alleged to be false, and her brother was the only person who had access to know it to be so.

The pursuer having opposed the examination of these witnesses, the Commissaries "sustained the objection."

The defender presented a bill of advocacy against the judgment, which the Lord Ordinary took to report.

The Court thought the interlocutor of the Commissaries right. The opinions delivered were the same in substance with those stated in the report, 10th July 1790, Dalziel against Richmond, No: 205. p. 16780. It was also observed, that the fact which the defender was desirous of disproving by her brother's evidence being sworn to by one witness only, could not materially injure her cause.

The Lords unanimously refused the bill.

Act. *Solicitor-General Blair, G. J. Bell*. Alt. *Fletcher*. Clerk, *Menzies*.
Fac. Coll. No. 12. p. 24.

No. 211.

A witness found to be admissible, although, while in the service of the party by whom he was adduced, and before his citation, he had drawn up, at his master's desire, and delivered to him, a state-

1798. *February 10.* THOMAS DURHAM *against* THOMAS MAIR.

Thomas Durham brought an action against Thomas Mair for defamation, in which the latter adduced as a witness, Alexander Wardrop, formerly his clerk, who being examined *in initialibus*, deposed, "that before he left the defender's service, and long before he received any citation as a witness, he drew up a paper containing an account of all the facts which he knew with regard to the cause, and likewise of other particulars which did not come within his knowledge, and that he signed the paper at the desire of the defender, and delivered it to him and has not seen it since."

The writing alluded to having been produced by the defender, it appeared, that although written by the witness, it was not signed by him, as he had erroneously stated.