

No. 115.

Giving more to a witness than the ordinary charges, disqualifies him.

1699. June 13.

FORBES *against* UDNEY.

Samuel Forbes of Foveran, and the Laird of Udney, being in mutual declarations as to the right of a fishing, and some links; and Udney adducing some witnesses, it is objected against them, That they cannot be received, because they have gotten good deed, in so far as Udney had hired a boat for them in the north to bring them about to Edinburgh, and had put in considerable quantities of provision to serve them by the way; and being, by storm, put in at Arbroath, he had assisted them since, and caused his stabler at Edinburgh give them lodging; and though parties be liable to witnesses for their necessary expenses, yet the giving of it by way of per-advance is a subornation, and dangerous novelty, especially with common people, who, at such a time of scarcity, will do much for good fare and entertainment. Answered, He had them under caption, and could have brought them *per* force, and all he furnished them with was only bread and ale, which is far within the eight pence a day, which the Lords modify to a footman; and it imports not whether they get it before or after, even as it is no usury to adjudge for the expenses of the infestment, though they are to be debursed afterwards; and, in the civil law, *edulia* are not reputed a bribe; and Udney had no design but to make his diligence effectual against the witnesses, and they shall purge themselves upon oath that what they have gotten was within the allowance of law. The Lords thought there was no design of corruption here, yet judged it of a bad preparative to engage the affections of such poor folk; and that in Spain, drunkenness, or a habit of swearing, or too much familiarity with the adducer, will reject a witness; therefore, to avoid all suspicion, they desired the Ordinary to try what quantity of provision Udney had laid in for them, and of what quality and kind it was, if beyond what they either used or ought to have; and accordingly to receive, if it did not exceed the legal allowance, with this reserve always, that the quantity might be the more because of the uncertainty how long they might be at sea.

Ecuntainhall, v. 2. p. 51.

No. 116.

1699. July 5.

HOME *against* HOME.

It being objected against a witness, that he not only was frequently entertained in the adducer's house, but was present at consultations in the cause, though that was before, not after the Lords by an act fixed the points to be proved; yet their Lordships thought this an affected abstinence, and therefore rejected him from being a witness.

Ecuntainhall.

* * This case is No. 5. p. 5238. *voce* HEIR APPARENT.

No. 117.

Inhabile witnesses admitted *ex officio*.

1699. November 17.

WILSON *against* WILSON.

Helen Wilson raises a reduction of a testament made by Alexander Wilson, her brother, whereby he nominated James Kelburne, his executor: And the tes-