

therefore ought to be rejected. Answered, An ultroneous witness is he who compares before the Judge uncited, and offers himself ready to depone, or instigates the pursuer to insist, on the assurance he shall be a witness: But so it is, this party now adduced did not compare before the Lords till he was cited by a messenger to bear witness in the cause. The Lords found he had shewed too great earnestness in coming to Edinburgh on their call, without any legal citation till he came there, and for this cause rejected the witness.

No. 121.

*Fountainhall, v. 2. p. 116.*

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1701. June 16.

SHARP *against* MURRAY.

No. 122.

George Irving being adduced a witness in the process Sharp of Hoddam against Murray of Brockelrig, and having deponed, he gives in a bill to the Lords, pretending some things had escaped him, which now burdened his conscience, and therefore craved to be re-examined for exonerating thereof. The Lords refused the bill; for by his oath there is a *jus quæsitum* to the party which the witness cannot retract. If one has not been interrogated fully, or has not deponed distinctly, he may be re-examined, but it must be at the desire of the party adducer, and not upon the witness' own application, who may be suborned to retract what he has said, and so infer perjury.

*Fountainhall, v. 2. p. 120.*

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1701. December 17.

ALISON *against* GORDON.

No. 123.

In a cause betwixt Alison and Peter Gordon merchant in Aberdeen, about a bill of exchange, improbation being proponed against it, and each party being allowed to improve or astruct, Mr. Gordon adduces one Wilson as a witness; against whom it was objected, That he was inhabile, being cautioner for Mr. Gordon in the suspension. Answered, *Non relevat*, because the principal is more than sufficient, and there is a posterior suspension wherein another cautioner is found, and so he is upon the matter exonerated and relieved. The Lords sustained the objection, and repelled the witness. Then Gordon offered to consign the sum contained in the suspension, which gave him effectual relief, so he could no more lose or win in the cause, which reason did cast him formerly. Answered, This was a good deed or gratification, and a sort of corruption—I will relieve you providing you depone. Replied, Though such a paction between parties might be liable to suspicion, yet when it is done *palam et auctore prætoris*, there can be no corruption, especially where one is cautioner for another that is uncontrovertedly responsal: If there were difficulty in recovery of his relief, there might be more ground of suspicion. The Lords found he might be simply received as to the producing of writs that *comparatione literarum* may serve in the improbation; but as to his giving his judgment and opinion upon the hand-writ and subscription, they admitted him only *cum nota*.

Where the witness has a direct interest in the cause.