

No. 148.  
suer, and the  
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witnesses for  
him.

ing in the cause, which is *ex officio*, and the giving partial counsel, which is an officious intermeddling in an affair without a call; besides, both the pursuer and Bailie Mitchel being now exauctorated, they are to be considered only as in a private capacity; consequently, *2do*, They cannot be supposed to have any authority over the officers produced as witnesses of the personal injury done to Bailie Tod, though aggravated by the circumstances of his being a Magistrate.

The Lords repelled both the objections made for the defender, and allowed Bailie Mitchel and the town-officers to be received as witnesses.

*Forbes, p. 633.*

1713. June 11.

JOHN CHALMERS, Merchant in Dunfermline, *against* GRANT of Dalrachny.

No. 149.

Upon report of the Lord Cullen, in the action at the instance of John Chalmers against the Laird of Dalrachny, the question being, Whether in the modification of the expenses of a witness, he ought to have allowance for the charge of a horse? The Lords found, That if the witness depone, That he used to ride when he travelled, and that he came on horseback to depone in this cause, he ought to have the expense of his horse allowed him.

*Forbes, p. 677.*

1713. June 19.

The CREDITORS of the Deceased WILLIAM HAMILTON of Orbiston, *against*  
JAMES HAMILTON of Dalziel.

No. 150.

In a reduction *ex capite lecti* of a disposition made by the deceased William Hamilton of Orbiston to James Hamilton of Dalziel, pursued against him by the granter's creditors; the Lords, upon report of the Lord Royston, refused to admit the defender's uncle as a witness for him to prove that Orbiston was *in liege poustie* when he granted the disposition, albeit he was an instrumentary witness therein, because the instrumentary witnesses were chosen of consent only for instructing the verity of the deed; and the pursuer did not quarrel that, but only its being granted on death-bed, which allegiance of death-bed ought to be redargued by unexceptionable witnesses.

*Forbes, p. 680.*