

quod satisfiut habere Deum ultorem si aliter factum fuit ab eo quam juratum fuit.

No 211.

*Fol. Dic. v. 2. p. 194. Colvil, MS. p. 358.*

1623. June 23.

COCHRAN against GECHIN.

ANENT a supplication given in to the Lords by William Cochran, craving a command to the Commissaries of Edinburgh to pronounce sentence in the action of divorcement betwixt him and his wife; the LORDS found, by trial of the Commissaries, that the inviolable custom was to stay sentence, or advising of the process, where there was a reprobator against any of the witnesses dependent unended; and the LORDS found, that the dependence of an action of corruption against the witnesses used in the principal cause, where that action was not libelled upon some deed of corruption, whereof the witnesses quarrelled had purged themselves by their judicial declaration, made by them when they were judicially admitted to be witnesses, ought not to stay the advising and ending of the principal cause, seeing that action was not of the nature of a reprobator; for they found, that no action could be called properly a reprobator, but which was intended upon a ground, resulting upon the judicial depositions of the witnesses, made when they were admitted and received to be witnesses; and likewise the LORDS found, that a reprobator being protested for, an action of corruption might be intended by any party after sentence, as well as before sentence, to annul the sentence, if the same depended upon that probation, which should be impugned by the reprobator, or action of corruption.

Act. Nicholson.

Alt. Hope &amp; Stuart.

Clerk, Gibson.

No 212:

That a witness was corrupted, how relevant.

Depending reprobator stays action:

1624. March 5.—IN an action pursued by Isobel Gechin, against William Cochran her husband, to hear the deposition of Francis Keith declared to be null, which was made by him as witness in the action of divorce, depending betwixt these parties, before the Commissaries of Edinburgh, because the said Francis was suborned by the husband, in so far as he had received promise of good deeds before his deposition, from the party producer of him, and which was performed and given to him after his deposition; the LORDS found this summons and reason of subornation, as it was qualified, as said is, relevant to infer the conclusion of nullity of his deposition, albeit it was not libelled in the said summons of subornation, that the good deed was promised, and given, and received, to depone falsely; for the LORDS found it not necessary, and would not restrict the pursuer to libel or reply, that the good deed was given *specifically ad hunc effectum* to depone falsely, but that he said enough, if he libelled and proved corruption, by the promise made by the party, before his deposition; albeit the excipient contended, that the corruption could not be found relevant, unless it were expressly libelled, that the good deed was conditional to him, and

No 212. that he deponed falsely, and against the verity, seeing he contended, that of the law any witness might lawfully receive from him, who used and produced him, good deed, if he deponed nothing against the truth, which allegiance was repelled.

Act. *Hope & Stuart.*

Alt. *Nicolson Younger and Elder.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 194. Durie, p. 67. & 117.*

\*.\* Spottiswood reports another point of this case :

1624. *March 16.*—A REPROBATOR is only when a party takes him to improve that judicial confession given by the witness in judgment, as what free goods he hath, or whose man he is, &c. which, if it be improved by a process of reprobator, his deposition will not be respected in that cause. And this should be done before sentence.

In the action of the reprobator pursued by Isabel Gichen against William Cochran and Francis Keith, the LORDS suffered both witnesses to be deduced in the cause, and Francis Keith's oath likewise to be taken upon interrogatories, because they did think the cause of the same nature with an improbation.

*Fol. Dic. v. 2. p. 195. Spottiswood, p. 294.*

No 213. 1632. *July 7.* LORD RENTON *against* LORD WEDDERBURN.

THAT a witness was corrupted, and bribed to depone falsely, found probable by the oath only of the party in whose favour the deposition was.

*Fol. Dic. v. 2. p. 195. Durie.*

\*.\* This case is No 224. p. 6787. *voce* IMPROBATION.

1635. *December 3.* ROBISON *against* WHITE.

No 214.

If a reprobator be protested for, an action of reprobator is competent after sentence to annul the same as well as before. But in this case the Lords ordained the reducer to consign L. 100 to be given to the defender, in case after trial it

ONE ROBISON, baxter in Dundee, having obtained decret *in foro contensioso*, against David White, maltman there, for payment of the price of certain victual wrongously intromitted with by him; which being desired to be reduced, upon this reason, viz. That the witnesses who proved that cause, and upon which probation the sentence only depended, have since confessed, that they deponed falsely, and were suborned to do the same; whereupon the reducer *alleged*, That they ought to be re-examined, that the verity might be known, and that he might not suffer by an unjust probation and sentence; and the defender opposing his sentence given against the party compearing, and that there was no protestation made by the pursuer, for reservation of his action of reprobation, which ought to have been done, if he intended to have quarrelled their depositions, and which is the only way permitted in law to parties, fearing to