No 26. no other judge. The LORDS found, That the verdict of the jury is not *probatio probata*, and that it is still competent to the creditors to object to the proof.

Fol. Dic. v. 2. *p.* 248.

*** Kilkerran reports this case:

WHERE one had, by a sentence of the Circuit or Justice Court, upon a verdict finding the facts proved, been convicted of theft and banished, but no judgment had been given upon that part of the libel which included damage, an action being brought before the Court of Session for damages, founded upon the conviction by the Criminal Court, the LORDS "Sustained the action, and found the sentence of the Criminal Court not to be a *res judicata*, to bar civil action for damages upon the same fact."

At the same time the LORDS allowed the proof led before the Criminal Court to be repeated in this process, but found that the said proof was not *probatio probata*, but that it was still competent to the creditors of the defender convicted (he himself was, as said is, banished, and no appearance for him) to object to the proof; for that however the sentence of the Criminal Court must have its effect so far as it goes, yet neither the *comitas* among the courts of different countries, nor the necessity which ties different courts within the same jurisdiction to regard the judgments of one another, can oblige one court to proceed farther than the other court has done, without being satisfied of the justice of the claim.

Kilkerran, (RES JUDICATA.) *No* 2. *p.* 495.

1733. *December* 15. Captain CHALMERS *against* Sir JAMES CUNINGHAM.

No 27. A PROCESS of count and reckoning, which had gone some length before arbiters, probation taken and interlocutors pronounced, having been brought before the Court of Session, after running out of the submission, without a decreet-arbitral; the LORDS found, That the probation, taken before the arbiters, ought to be admitted as evidence, so far as the same is habile, and concluding upon the subject matter of it, reserving all objections upon the import or insufficiency thereof; and reserving to either party to re-examine such of the witnesses as are alive, the party being always at the charge of the re-examination, and the former depositions being previously cancelled; lastly, reserving to either party to adduce what other proof they think necessary. *See* APPENDIX.

Fol. Dic. v. 2. *p.* 349.