

No 210.

not be received, though ever so clear, before pronouncing decree; but only if protestation has been admitted, which may afterwards be insisted on.

tain witnesses examined, in an incident diligence, for proving the tenor of an obligation. Before the pronunciation of the decret, the Bishop gave in a supplication, and desired to be heard, to improve and falsify a witness, called Ogilvy, and his deposition, which witness was very suspect to sundry of the Lords, and *alleged*, on his supplication, certain practicks past of before, betwixt the Earl of Errol and the Laird of C. which were recent in the Lords' memories. The matter being reasoned among the Lords, some were of that opinion, to grant the desire of the bill, conform to the practicks past of before, and also conform to the common law, *nam si opponens contra testes offerat promptam suæ oppositionis causam ut in presenti causa offerebat Episcopus*, to improve the witness, by his own hand-writ, *tunc incontinenter recipiendam eam probationem*. It was reasoned upon the other part, that if it was brought in practice of receiving of improbation of witnesses, before the giving of the sentence and decret, there would rise, and follow, many great inconveniences, *et nunquam esset litium finis*, for they would ay take to improve witnesses, and stay process, and of the practice of this country there is not *apertura et publicatio testimoniorum*, but *judici tantum*, and the party is not herein hurt, because, if he protest, and take instruments and protest of the witnesses' depositions, after sentence, he will be heard to improve the same, *et sic beneficio protestationis ei semper servetur integrum jus reprobandi personas testium*. THE LORDS would not grant the desire of the bill, and refused the reprobation of witnesses, before the decret be given, *tanquam contrarium praxi*.

Fol. Dic. v. 2. p. 193. Colvil, MS. p. 284.

1583. March.

STEWART against STEWART.

No 211.

A party having duly purged himself of partial counsel, the Lords refused to allow any other probation of partial counsel.

IN an action of reduction of certain tailzies, intented at the instance of Margaret Stewart, *alleging* to be nearest of true heir to the umquhile Laird of Rosyth, and the young Laird of Durie, her spouse, for his interest, against Harry Stewart, nearest heir of tailzie of the same lands, Harry Stewart, the Laird of Barnbougall, *alleged*, and offered to prove, and to remain in ward, in the mean time, That Robert Commendator of Dunfermline, one of the number of the Session, had given partial counsel in the said action. It was *answered* by my Lord Commendator, That he had of before purged himself of partial counsel, and given his oath. The matter being reasoned among the Lords, if the probation of the pursuer should be received to prove the giving of the partial counsel, the LORDS found, by interlocutor, that they would not receive any probation after the declaration and purgation of my Lord's own conscience, et

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 & 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 *specificè 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