

No. 72.

1671. January 31. LD. MILTON *against* LADY MILTON.

In clandestine crimes, such as adultery, infamy is not a relevant objection against a witness, unless it be *infamia juris*, by doing a deed which the law declares to infer infamy, or where the witness is declared infamous *sententia judicis*.

The attempt of corrupting a witness, by giving, or promising a good deed, more than suitable to the witness for his charges, is a relevant objection.

It is a relevant objection against a witness, That he was instructed or prompted how to depone, without necessity to allege that the witness undertook to depone accordingly; which is introduced *in odium corruptentis*, inferring no blemish upon the witness so prompted who consented not, nor swore falsely.

In clandestine crimes, such as adultery, it is not a relevant objection against a witness, that he is not worth the King's unlaw.

Stair.

\* \* \* This case is No. 217. p. 12105. *voce* PROCESS.

1671: July 11.

ANDREW and ADAM STEVENS *against* CORNELIUS NEILSON.

No. 73.  
Witnesses  
examined  
*ex officio* in  
a reduction  
of a deed on  
the head of  
circumven-  
tion, whether  
the writ was  
read to the  
granter, and  
what motives  
were used to  
make him  
subscribe.

Andrew Steven having made a disposition of his lands to Cornelius Neilson his good-brother, and thereafter another disposition to his brother Adam Steven; they pursue a reduction of Cornelius's disposition; *first*, As being upon trust, and only for the security of a thousand merks, whereanent, it being debated anent the manner of probation and witnesses, *ex officio*, being craved for clearing the trust, by the writer, witnesses and comuners;

The Lords refused to sustain the same, till first they considered the other reason of circumvention, which was libelled thus, That the disponer was a lavish, weak person, that the disposition was elicited by his own good-brother for a thousand merks only, and that he kept him privately from the access of all other friends, and drank him drunk, in which condition he was when the disposition was subscribed, and that it was not read unto him; and it being excepted upon a ratification, some weeks after at another place, and the reason of circumvention repeated on the same terms against that ratification:

The Lords ordained witnesses to be examined *ex officio*, upon the reason of circumvention as to both, and specially, whether these writs were read at the subscribing, and whether the subscriber was drunk, and whether he was thereby insensible or d'sordered in his reason, or what were the motives induced him to subscribe.

Stair, v. 1. p. 751.