

ordered and adjudged, that the interlocutor of the said Lords, dated the 4th, and signed the 5th March 1789, also complained of by the said original appeal, be, and the same is hereby also *reversed*, without prejudice to the respondents in the original appeal insisting and producing evidence to show that they were entitled to stop and detain the grain consigned by them to James Stein the bankrupt *in transitu*, or before *actual delivery*; and also without prejudice to the appellants in the original appeal making such objections thereto as they shall be advised. And it is hereby further ordered that the cause be remitted back to the Court of Session in Scotland, to take such evidence, and to hear the parties; and to do therein what shall appear to them just as to that point. And it is further ordered and adjudged, that the said interlocutor of the said Lords, dated 4th, and signed 5th March 1789, complained of by the cross appeal, be, and the same is hereby affirmed.

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 v.
 JARDINE.

For Appellants, *Ilay Campbell, Allan Maconochie.*

For Respondents, *A. Pigott, Math. Ross, Cha. Hope.*

MAGDALANE BARBARIE DE LA MOTTE, *Appellant*;
 SIR WM. JARDINE of Applegirth, formerly }
 Captain Wm. Jardine, } *Respondent.*

House of Lords, 25th Feb. 1791.

DIVORCE—PROOF—RE-EXAMINATION OF WITNESS.—Where bribery and malice were objected against a witness adduced, the objector allowed a proof of these before oath was allowed to be put. A party, after she had adduced four witnesses to prove the above objections, prayed the Court, by minute, to be allowed to re-examine these four witnesses, in order to prove certain conversations, said to have taken place with James Spalding, Margaret Johnstone, and Thomas Brockie, witnesses for the respondent, about the time, or after they had given evidence in the cause. Held, that this was incompetent, the intention being to discredit the respondent's witnesses, by proving those conversations, and the facts besides not falling within the conjunct probation.

This was an action of divorce, raised by the respondent

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against his wife, for acts of adultery committed by her with Lieut. Samuel Pleydell, the respondent's nephew.

A proof being allowed, in the course thereof, objections were stated to several witnesses, in particular to Margaret Johnstone, who had been the waiting woman of the respondent, and to James Spalding and Thomas Brockie, two of the men servants in the family. The objections to Margaret Johnstone were: 1. That, before or since the time of her being cited as a witness, she had received from the respondent, and others employed by him, considerable sums of money for giving evidence in the cause, and that she had been promised a settlement for life, on condition of giving her testimony against the appellant: 2. That she had repeated private communications with the respondent, and those employed by him, and had desired information how she should depose: 3. That she was an ultroneous witness, from views of gain and revenge; that she bore ill will and malice against the appellant, and had repeatedly declared, that if she were admitted as a witness, she would ruin the appellant: 4. That for sometime past, and at this moment, she is lodged, boarded, and clothed at the expense of the respondent, much beyond her station.

The objections to Spalding and Brockie were in these words:—"That they have both received money, or good deeds and reward, for giving evidence in this cause, and that both of them, particularly the former, have given advice and assistance to the pursuer in managing this cause; and, in particular, in tampering with Margaret Johnstone." As to Thomas Brockie, these objections were afterwards judicially passed from; but, as to the others, the Commissaries allowed a proof of these objections. Accordingly, *before these two witnesses were put on oath*, nine witnesses were examined, for the purpose of disqualifying them. But the Commissary, after proof and full debate thereon, found "the proof brought insufficient to establish the charge of bribery or malice against the said witnesses, and therefore allow them to be examined, reserving all objections to their credibility."

This interlocutor was acquiesced in by both parties, and the witnesses examined accordingly; after which the proof proceeded, and finally established the adultery against the appellant. Finding this to be the case, she betook herself to the plea of recrimination, and after repeating a summons to this effect, the Commissaries found no proof to support

such a plea. She then resorted to her original plan, of attempting to discredit the respondent's witnesses; and, with this view, she gave in a minute and condescence, desiring leave to re-examine four persons whom she formerly adduced upon her proof of objections, by whom she proposed to prove certain conversations said to have taken place between James Spalding, Margaret Johnstone, and Thomas Brockie, witnesses for the respondent, about the time, or after they had given their evidence in the cause.

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The Commissaries pronounced this interlocutor:—" In Aug. 29, 1787. " respect the interrogatories have no connection with any " fact stated in the libel, and do not fall within the meaning " of the conjunct proof allowed to Mrs. Jardine, but have " no other tendency than to discredit the depositions of the " witnesses, setting up in opposition thereto a proof of con- " versations alleged to have taken place among the witnesses " after being examined; find the interrogatories incompetent, " and refuse to put the same."

Thereafter the Commissaries pronounced decree, finding the libel proven, and decerned. This decree was extracted when the appellant brought a reduction of the decree.

The Lord Ordinary pronounced judgment, repelling the June 14, 1788. reasons of reduction, assoilzied the respondent, and decerned; and, on two reclaiming petitions to the Court, they ad-
 —28,—
 —29,—
 hered.

These interlocutors were appealed to the House of Lords. After hearing counsel, it was Ordered and adjudged that the interlocutors be affirmed.

For Appellant, *Arch. Macdonald, Jas. Allan Park.*
 For Respondent, *Sir J. Scott. T. Erskine, Robert Dallas.*

WILLIAM MOREHEAD, Esq.,	<i>Appellant ;</i>
CHARLES EDMONSTONE, Esq.,	<i>Respondent.</i>

House of Lords, 28th Feb. 1791.

SASINE—DISPENSATION CLAUSE—TITLE—QUALIFICATION.—Held, terms of dispensation clause in a charter sufficient to authorize infestment at the place mentioned in the charter, for any part of the lands, as well as for the whole. Also, that the valuation of