

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.

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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

be hurt by the depositions of witnesses, whereby they may help themselves, and not by such actions of reduction, as is now intended, the preparative whereof he alleged to be of so dangerous consequences, that never shall any party be in security, if such reductions be permitted by alleging the witnesses to be suborned, and so to crave them to be re-examined, who after any space may either forget the particulars, whereupon they have deponed, or otherwise may be suborned by the party to alter their depositions: THE LORDS found, that this, and the like reductions, were receivable, notwithstanding of the sentence given *parte comparente*; and therefore that they would try this reason, if the witnesses were suborned, and had deponed falsely *in prima instantia*, and to that effect that they would examine the said witnesses thereupon; and found this action was of the nature of a reprobator; and because there might be peril in the form, to give way to such pursuits, where there were sentences given upon probation against parties compearing, if after trial there should be found no just cause to infringe the sentence, and to cohibit the preparative, if any should move the like action without good grounds; therefore the LORDS ordained the reducer to consign L. 100 to be given to the party defender in this process, in case after trial it shall be found that there is no reason for this action; which sum was modified, because the sum contained in the sentence was not far above the penalty, and also the parties were but mean persons; whereas if the sentence had been a matter of more consequence, the LORDS would have modified a greater sum for penalty.

Clerk, *Scot.*

*Fol. Dic. v. 2. p. 196. Durie, p. 781.*

1667. February 25. Lady MILTON against Laird of MILTON.

THE Lady Milton having obtained divorce against John Maxwell, younger of Calderwood her husband, before the Commissaries of Edinburgh, Sir John Whiteford of Milton, who had gotten a disposition of her liferent-right from her husband, pursues reduction of the decret of divorce, on these reasons, that the decret was in absence, and that he compeared before the Commissaries, and craved to be admitted for his interest, and was refused, and if he had been admitted he would have objected against Paterson and Clerk, the only two proving witnesses, that they were not habile witnesses, being neither men of fame nor estate, and Paterson by common reputation of very evil fame, and that they were not purged of partial counsel, but suborned by the Lady, and had both received money to bear testimony, and promise of more, and were prompted by the pursuer how to depone. *2do*, As they were not habile, so neither did they prove the commission of adultery. THE LORDS caused produce the process, and testimonies before the Commissaries; and finding that the

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should be found that there is no reason for the action.

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Found that subornation or corruption of witnesses could not be instructed by their own posterior testimonies.