

No. 202.

ought to be produced before the Judge, and cancelled by his authority. This the witnesses are entitled to demand, that they may not, from the want of a distinct recollection, be exposed to a suspicion of perjury. And it is still more the undoubted right of the defender, who ought to be tried only by that proof to the adducing of which he is a party.

The opportunity here given to the witnesses, of comparing what they had said with the other testimonies, was in the highest degree reprehensible and illegal. To restrain the freedom of evidence, is the least evil which could ensue from it. Were such a practice permitted, nothing would be more easy, than, under the colour of a precognition, to form a combination for depriving any one of his fortune, or his life, and, by afterwards giving to the persons employed a perusal of what they themselves and their confederates were to swear, to preclude almost every avenue to detection.

It appeared, that the precognition had been *bona fide* taken for the purpose of bringing a criminal action, and that one of the witnesses, hearing of his intended re-examination, had insisted upon seeing the declaration he had formerly emitted. The pursuer's character, too, as well as his agent's, removed every idea of an unfair intention on their part. The Court, however, unanimously sustained the objection. The cancelling of his previous declaration, it was observed, every witness has a right to demand, though not inspection of it before he be examined in the trial; but to send, as was here done, the whole proof to each witness, was highly unwarrantable, and of the most pernicious tendency.

The Lords sustained the objection to the witnesses to whom their declarations had been sent previous to their examinations, and found, that their evidence could not be admitted in this cause; and likewise found the agent for the pursuer liable in a fine of £5 for the use of the poor.

Lord Reporter, *Rockville*.  
Alt. *Mackintosh, Maclaurin*.

Act. *Wight, Buchan Hepburn*.  
Clerk, *Home*.

C.

*Fac. Coll. No. 230. p. 356.*

No. 203.

A nephew-in-law may be examined as a witness.

1786. November 20. BROWN of Johnston-Burn.

The Ordinary on the oaths and witnesses reported to the Court a question as to the admissibility of a witness, who was nephew-in-law to the party in whose behalf he was cited.

The Lords were unanimously of opinion, That the witness should be examined.

Lord Reporter, *Eskgrove*.

*Fac. Coll. No. 295. p. 455.*