

whereof might be easily mistaken, therefore, they found it only probable by the witness's own oath, and granted diligence to re-examine him. No 223.

Fol. Dic. v. 2. p. 194. & 195. Fountainhall.

This case is No 5. p. 9237. *voce* NAUTÆ, CAUPONES, &c.

* * * The like was found, where it was objected against a witness, That he had declared he would swear best to them who paid him best.—Fountainhall; Forbes; 17th June 1707, Livingston *contra* Menzies, No 69. p. 3265.

1737. January 5. JAMES WRIGHT *against* JOHN DIN.

IN this process, a proof having been allowed to both parties, the pursuer, in the beginning of the examination, protested for reprobators against the defender's witnesses; after which, Elizabeth Neilson, spouse to James Elder, was examined as a witness for the defender; against whom Wright *objected*, That, in May 1727, she had been put in the Town-guard for keeping a bawdy-house; from whence she was liberated, upon enacting herself to depart the city, never to return, under the pain of the Correction-house; notwithstanding whereof she had returned, and continued the infamous practice of bawdy procuring.

Answered for Din; The objection was neither competent nor relevant. As to the *first*, it was *pleaded* to be a rule in law, That whatever falls under reprobator is not competent, where there are *contestes*; it being only given where the witness is likely to stand single, as in the initials of the oath, or the *causa scientia*: Thus Lord Stair says expressly, B. 4. T. 43. p. 717. and in several other places, That the testimonies of the reprobators may not be *contra dicta testium*, where there are *contestes*. Now, in the present question, another witness has concurred with Elizabeth Neilson; neither can every objection, which was not proponed before the witness was sworn, be hooked in under the head of reprobators, only because they were protested for in the beginning; *2dly*, It is not relevant; because, although infamy is a good objection by our law, yet none are reckoned such but those who are convicted *criminis infammantis*. Now, the enactment referred to is no conviction, but a transaction which would not infammate, since it was done with the intervention of the Magistrate. But, granting the objection were true, which is denied, still it is not relevant, seeing it is not of the same kind with false swearing; for a woman may be supposed lewd, or a promoter thereof in others, and yet scruple at swearing a false oath.

THE LORDS repelled the objection, in respect no particular reprobator was protested for, but only reprobator against the witnesses in general.

Fol. Dic. v. 2. p. 194. C. Home, No 46. p. 82.

No 224.

The Lords repelled reprobator, because not particularly protested for at the examination of the witness.