No 575. bribe ten. But the case of the Council is different. We extend this presumption from one act to another of the same person; but there is no foundation for extending it from one person to another, though both be members of the same politic body. In the case of a crime, even the strictest of all connections, that of parent and child, will not support such an extention.

2*do*, Supposing a foundation for this presumption in other instances, it ought never to be admitted in the case of bribery. We frequently presume a fact to have happened upon a *semiplena probatio*, because there is no offer made to prove the contrary. This last circumstance being the chief foundation of every presumption, it follows clearly that a presumption ought never to be admitted, where the contrary proposition resolves into a negative that is not capable of proof. This is the case of bribery; for to affirm that a man has not been bribed, is a negative not capable of proof. Hence it follows, that to sustain a presumption of bribery where there is no clear evidence, is in effect to give a *semiplena probatio* the effect of a complete proof.

Alexander at the same time carried on a reduction of the Michaelmas election of Easter Anstruther, which had declared for Sir John Anstruther. It was proved that Bailie Johnston, who had long governed that town, brought the whole Town-Council to vote according to his direction, upon his engaging to pay the debts of the town. Here the whole Town-Council were bribed; but there being no evidence that the persons who were voted into the Council had any knowledge of this corrupt bargain, a doubt occurred, whether these innocent person scould be deprived of their right by the crime of third parties. But the following answer satisfied the Court, viz. That it is against conscience for any man to use a right that he acquires by a criminal act committed by another. And accordingly this election was unanimously reduced, 7th August 1767, Alexander Young *contra* Andrew Johnston of Rennyhill. (Not reported.) (See No 54, p. 3720.)

Sel. Dec. No 152. *p.* 323.

SECT. IV.

Holding how proved.—What proof that a decree had been extracted.

No 576.

A blench-holding found not relevant to be proved by retours, but only by charter and sasine.

1543. *June* 16. King's Advocate *against* Ld. of Houston.

The Lords retreated the Laird of Houston's retour of the lands of ———, because the assize saw no charter of blench-holding of the lands, but two or three retours eighty years old, making mention that they were holden blench;

and also the superiors thereof, viz. the Lairds of Calder and M. had not their precepts of sasine conform to the retours of blench, and therefore domini superiores videbantur confessi tacite terras easdem in albam firmam teneri, and therefore the LORDS assoilzied the assize from wilful error, because the matter was doubtful, and not the less because blench-holding cannot be proved but by charter and sasine thereof, and that retours in this case make no sufficient probation; therefore the LORDS retreated the said retour for ignorance of assize, as said is; and in this case the Laird of M. was the other party, and this retour was by the said James's tenants retreated, for not production of the charter and sasine, which would not have been done in case that they had been produced. No 576.

Fol. Dic. v. 2. p. 267. Sinclair, MS. p. 50.

1705. *July* 3.

JOHN DICKSON of Hartrie *against* ALEXANDER MILN of Caridden.

No 577.
A decree being marked in the respond-book as extracted, and an attestation from the keeper of the minute-book, that the dues of extracting were paid, not sustained as sufficient proofs that such a decree wasextracted, it not being found in the register.

IN the action at the instance of Dickson of Hartrie, against Alexander Miln of Caridden, an allegeance of *res judicata* being proponed by the defender, who could not produce the extracted decreet, but only the whole warrants thereof, it was *alleged* for the pursuer, That albeit such a decreet could now be extracted from these warrants no extract being produced, it stands in the terms of a naked interlocutor, and the matter may be reconsidered, which is never denied to any party applying upon new grounds before extracting; for nothing but a decreet already extracted makes a *res judicata*.

Answered; For proving the decreet to have been extracted, the defender adduceth an attestation under the hand of the keeper of the minute-book, that the dues were paid, which is never done till after extracting, and the Respond-book in the clerks' chamber, where the decreet is again set down as extracted, and so marked by the extracter. Now no decreet is inserted in the Respond-book until it be signed by the clerk, that book being the rule of counting for the clerk's dues.

Replied; The evidences and instructions produced do not prove that the decreet founded on was extracted; for no such decreet is found booked. It is true the Respond-book mentions a decreet betwixt parties of the like surnames, but *non constat* that the parties were the same. And albeit that were cleared, yet the presumption from thence is but weak; for decreets in the Respond-book, whereof the dues are paid, are many times stopped and recalled and sometimes never taken out. Nay further, it appears from the records of decreets pronounced about that time, that the decreet founded on was never booked. And though such a decreet had been given out and extracted, it might have intrinsic nullities; it might have been recalled; it might have been