

1553. *May 6.* CUNNINGHAM *against* LADY SEMPLE.

No 557.

THE LORDS refused to improbate an instrument, although there were but two of the witnesses living, one of whom improbated, and the other approbated the writ; and the notary first denied, and the next day owned it.

Fol. Dic. v. 2. p. 264. Maitland.

* * * This case is No 1. p. 309I. *voce* CONSUETUDE.

1562. *December 18.* WOOD *against* CRAMOND.

No 558.

GIF all the witnessis contenit in ane instrument be deceist, except ane, quha, with the Notar, alledgis the samin to be trew, the said instrument sould on na wayis be decernit to be false and feinzeit.

Fol. Dic. v. 2. p. 264. Balfour, (OF IMPROBATION.) No 11. p. 383.

1565. *June 30.* The QUEEN'S ADVOCATE *against* TODRIG.

No 559.

GIF ony officiar, or messenger, executis ony letter befoir twa witnessis, and it happin the officiar, with ane of the witnessis, to deceis, the samin execution or indorsatioun may be impreivin as false and feinzeit, gif the uther witness on life passis fra the samin.

Fol. Dic. v. 2. p. 265. Balfour, (OF IMPROBATION.) No 12. p. 384.

* * * Maitland reports this case:

1565. *July 18.*—IN an action of improbation of an execution of an arrestment, moved by the young Laird of Niddrie against George Todrig, burgess of Edinburgh, alleging the said instrument to have been feigned; and took to prove the same; and one of the two witnesses inserted in the indorsation deponed, that he was never at the said execution nor arrestment making. The officer deponed, that the execution was of a long time, and he could not remember thereof, without he saw his own hand-writing and indorsation, which then was away, because this execution was *in processu*, which was drawn forth of the official books of Lothian; the other witness being dead, and no more witnesses being but two in the indorsation. The pursuer *alleged*, It was improved; because the one witness falsified the same. It was *answered*, That the officer denied not the same, and so improved not; and the other witness being dead, the indorsation or execution ought to make faith; because, the officer being a public person, with one witness, was sufficient to make faith against one witness. It was found by the LORDS, that the execution was not improved, and so assoilzied from the pains; but decerned that the said execution should make no faith; nor yet, if the same had been an instrument, one witness improving, the notary and other witness, will not make the instrument to have faith; because a notary must have two witnesses at the least.

Maitland, MS. p. 202.