is further proved, That the defunct, some days after the testament was executed, delivered it to the father of Agnes Myles, and recommended it to him to take care of it. No. 71.

In point of law, the evidence of the instrumentary witnesses, improbatory of the deed, may certainly be redargued by contrary evidence. For if, upon any occasion, the instrumentary witnesses should upon oath deny their having seen the party subscribe a deed, or heard him acknowledge his subscription, the verity of the deed might still be astructed by collateral proofs; as was found in a late case, Isabel Rolland against John Rolland maltster in Culross, though that case never came to a final decision.

Observed on the Bench: That in this case *non deficit jus sed probatio.*—In the case of notaries, the greatest strictness ought to be oberved, and they ought not to be allowed to dispense with any part of the strict forms.

"The Lords found, That the testament was not regularly executed; and therefore reduced the same; and decerned."

Act. *Johnstone, Ferguson.* Alt. *Lockhart.*

J. C. *Fac. Coll. No. 222. p. 409.*

1765. *June* 21. GORDON *against* MURRAY.

No. 72.

Objected to the conveyance of a ground of debt in an adjudication, that though it was subscribed by two notaries, there were only three subscribing witnesses. The Lords sustained the objection in so far as the debt conveyed exceeded the sum of £100 Scots.

Fac. Coll.

*** This case is No. 28. p. 16817.

1767. *July* 1.

ELIZABETH and MARTHA ROLLANDS *against* RICHARD ROLLAND.

No. 73.
A deed signed by two notaries, but at different places, and before different witnesses, found not valid, nor supportable by a proof of homologation.

George Rolland having purchased some heritable subjects, took the disposition thereof "to himself and his wife in conjunct fee and life-rent, and to the heirs lawfully procreated, or to be procreated, betwixt them, in fee." After his death, Richard Rolland, his eldest son, obtained a charter of confirmation of the disposition, and a precept of *clare* from the superior, and was infeft, and died in possession of the heritage in the year 1760.

Richard Rolland, his son, succeeded to him, and, in right of his apparency, continued the possession, and uplifted the rents until the year 1764, when the tenants having refused to make any further payments, he brought an action against them.