

1587. *March.* HAMILTON *against* CRAIGIE-WALLACE.

IN an action of suspension betwixt Claud Hamilton, Commendator of Paisley, and the Laird of Craigie-Wallace, there was an execution of an inhibition taken to be improved; and the executor, with one witness only, abided at the same; and because there were other two witnesses that deponed contrary, and abided not at the execution; the LORDS found that the execution should make no faith.

Fol. Dic. v. 2. p. 265. Colvil, MS. p. 424.

1594. *March.* LORD NEWBOTTLE *against* SIMPSON.

MY Lord Newbottle pursued one Simpson, in Easthouses, for improbation of certain instruments, whereby the said Simpson had offered to prove, that he had made real offer of his mails and duties to my Lord, of diverse years and terms. The notary, and certain living witnesses, being examined; there being two witnesses that abode by the instrument, the same was found sufficient; albeit there were more of the witnesses that improved the same; because, two abiding by it *in re modica*, the rest of the witnesses were thought supernumerary. The rest of the instruments, wherein there was only one living witness, with the notary, abiding by the instrument, the same being improved by two or three living witnesses, was deemed to make no faith. And, generally, in all the instruments, the dead witnesses were not respected, where there was a sufficient number of living witnesses, that either approved directly, or improved directly, the said instruments. And when the instruments were not directly improved by the living witnesses, it was thought that the dead witnesses approved the same *presumptive*. Always the indirect improbation has place when the witnesses are dead.

Fol. Dic. v. 2. p. 265. Haddington, MS. No 520.

1611. *March 14.* BUTTER *against* FORBES.

IN an action of spuilziation, pursued by Patrick Butter *contra* William Forbes of Logie, the LORDS found an execution to make no faith, where the officer was deceased, and there being two witnesses, one affirming, the other denying.

Fol. Dic. v. 2. p. 265. Kerse, MS. fol. 205.

No 560.

No 561.
Dead witnesses approve *presumptive*.

Where there are a sufficient number of living witnesses, a writ may be directly approbated or improbated by them.

Where there is but one, with the notary, who approbate, a greater number will improbate.

No 562.