

Whitfield, No 553. p. 12645, on such affidavits, the LORDS did not regard them, but renewed the commission, but that was to prove a marriage celebrated at London, which was an easy case to this. THE LORDS at last agreed to find that the affidavits made a presumptive probation of his death, but ordained Henderson the pursuer to find caution to restore, in case it should afterwards appear he was alive, or that it was another man. Some started that it was hard to lay him under a perpetual caution, but that it might expire if nothing appeared after seven years; but the LORDS would not restrict to any time.

Fol. Dic. v. 2. p. 264. Fountainhall, v. 2. p. 611.

S E C T. III.

Forgery.—Bribery.

1541. *March 14.* JANET SCOT *against* ROBERT BLAIR.

No 556.

GIF twa witnessis be insert in ane instrument under the note and subscription of a Notar-publict, and ane of thame passis fra the samin, albeit the uther witness, with the Notar, affirm the samin to be of veritie, nevertheles the said instrument sall mak na faith; because in all publict instrumentis, at the leist twa witnessis, with the Notar, ar necessarlie requirit.

Fol. Dic. v. 2. p. 264. Balfour, (OF IMPROBATION.) No 13. p. 384.

* * Sinclair reports this case :

IN Janet Scot's cause against Mr Robert Blair, the instrument produced by Mr Robert Blair bearing, that the resignation of two chalders of victual, alleged pertaining to him in heritage, and that pertained to umquhile Robert Down, was made in the Laird of Tullibardine's hands, superior thereof, by virtue of two procuratories of the said Robert Down, one in paper, and the other in parchment, *sub forma instrumenti publici*, was decerned by the Lords improved sufficiently, because there were but two witnesses therein inserted, and one of them deponed that the said resignation was made by the procuratory in paper, and that he saw the same, and that there was no other procuratory then shown in parchment; and so he was direct contrary to the instrument. The other witness was conform, except he said there was no procuratory in parchment then shown, as he remembered; and because *ad substantiam instrumenti publici requiruntur ad minus duo testes, cum notario; et sic uno eorum contradicente instrumentum directe, manet instrumentum sine solennitate illa testium substantiale, et non remanebat justa probatio; ideo, non valet instrumentum.*

Sinclair, MS. p. 17.