

CONSUETUDE.

SECT. I.

Habite and Repute a Notary, Messenger, &c.

1553. May 6.

CUNINGHAM *against* SEMPILL.

ANENT the action pursued be Hew Cuningham against Lady Sempill for improving of ane instrument whilk was produced before the LORDS, the most part of the witnesses insert died, and but two of them on life, who were called before the Lords, together with the notar, sworn and examined; the said notar first denied the said instrument, whilk was producit before the Lords, and upon the morne came and approvit the same, ane of the living witnesses, (denied) the said instrument, and the other approved the same. And also, it was *alleged* be the said Hew, for improving of the said instrument, That the said notar gave the same lang before he was made notar, as was clearly proven be his instrument of creation shown and produced. It was *replied* be the other party, That he was holden be the hail country notar; and, to that effect, produced diverse and sundry instruments, for diverse parties, made be the said notar lang before the said instrument producit be the said Lady.—The said LORDS being advised with the said notar, fand, be interlocutor, the said instrument good, and not improven, but to have faith, notwithstanding the foresaid things alleged in the contrare.

Fol. Dic. v. 1. p. 201. Maitland, MS. p. 117.

1608. June 4.

SOMERVILLE *against* JARVISWOOD.

IN an declarator pursewed be Somerville against Jarviswood, it being *allegit* That the horning was null, because the messenger, executour and denuncer, was deprivit; it was fand be the LORDS, that the defender behoved to offer him to prove, that the deprivation was lawfullie publishit at the mercat croce of the head burgh where the officer dwelt.

Fol. Dic. v. 1. p. 201. Haddington, MS. No 1448.

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No 1.

A bond was subscribed by two persons whereof one was not a notary, yet because he was *tentus, habitus, et reputatus* a notary, it was sustained.

No 2.

An execution being quarrelled, because the messenger was deprived, this was found not relevant, unless the deprivation was published at the market cross of the head burgh where the messenger dwelt.