

\* \* Dirleton reports the same case :

IN the case betwixt Mr Andrew Brian and George Grahame, the said George being constituted assignee to a bond granted by the said Brian to Thomas Jack, and having charged thereupon, the suspender offered to improve the bond, and urged the charger to abide by the same, which he was content to do in these terms, viz. That he did abide by the said bond as truly assigned and delivered to him by the cedent ; and that the cedent would compear and abide by the same as a true bond.—The suspender *answered*, That the cedent was *lapsus*, and had come out of prison upon a *bonorum* ; and therefore he ought to find caution to compear all the diets of the process.—THE LORDS found, That the cedent should abide by the said bond, with certification, that if he should not appear when the Lords should think fit, for clearing the question anent the falsehood of the bond by his oath or examination, the bond should be declared to be void, and to make no faith both as to cedent and assignee.

*Dirleton, No 11. p. 6.*

No 175.

1668. *January 21.*

HOME *against* TELFER.

AN exception of improbation being proponed against a writ, and thereafter Telfer of Harycleugh being desired to abide at it, he declared that he had gotten it as a true evident, and condescended upon the way he had gotten it, and it being alleged that he ought to be positive, whether he would abide at it or not,

THE LORDS declared that after probation they would consider how far his using and abiding at the said writ should import against him, and if he be in *bona fide* to use the same.

*Fol. Dic. v. 1. p. 456. Dirleton, No 142. p. 58.*

No 176.

1672. *June 20.*

HENDERSON *against* HENDERSON.

IN an improbation betwixt Henderson and Henderson, the production being satisfied, and the writs produced, there was a term assigned to the defender to compear and abide by the same ; and the defender not compearing, and the term circumduced, it was proposed to the Lords what should be done thereupon, whether the writs should be improven *simpliciter* upon that evidence, that the user thereof would not bide by the same, so as to infer a forgery, or if further evidence behoved to be made use of.

THE LORDS found, That decret ought to follow thereupon, as upon the certification implied in the act for biding by, that they should make no faith in the same manner as in a certification for not production.

*Fol. Dic. v. 1. p. 457. Stair, v. 2. p. 85.*

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No 177.

In an improbation, where a term was circumduced for not abiding by the writ, it was declared to make no faith, as if it had not been produced.

\*\*\* Dirleton reports the same case :

No 177.

A BOND being produced to satisfy the production in an improbation, the LORDS, without further probation, did improve and decern *quoad* the defender, in respect he refused to abide by the truth of the same.

Clerk, *Gibson.*

*Dirleton, No 168. p. 68.*

No 178.

Decree of certification was pronounced for not abiding by, and it was left in the pursuer's option, either to take out this certification, to insist in the improbation, or to insist in a declarator of its nullity for wanting witnesses. The witnesses here were under age, and could not have sworn positively as to the fact.

1675. June 10.

GRANT *against* GRANT.

IN the improbation of a bond, the bond being produced, and the defender refusing to abide by the same, certification was craved against the said bond, because the defender did not abide by the same; and the LORDS were clear, that the certification should be granted for not abiding by the said bond, though it was produced; but because the witnesses in the bond had been examined, and there being only two witnesses to the same, they both declared that they were *impuberes*, the one of eight and the other of nine years of age, the time of the subscribing of the bond, and the subscription was not like the subscription now used by them, and to their remembrance they were not witnesses to the same, but were not positive that they were not witnesses.

THE LORDS, in respect of their declarations, and that the defender himself, did in effect, at least presumptively, acknowledge the falsehood of the bond, in so far as he did not abide by the same, had an impression that the bond was false, and therefore they granted certification for not abiding by the same; and did leave to the pursuer, either to take out the certification, or to insist in improving of the bond, or for declaring the same null, as wanting witnesses, as he should think fit; seeing, without question, though the witnesses did not fully improve it, yet in respect of their age the time of their pretended subscribing the same, and by their declaration they did not astruct the truth of the same, in which respect the bond ought to be constructed, and looked upon as wanting witnesses, and so null.

Clerk, *Mr Thomas Hay.*

*Dirleton, No 262. p. 126.*

1675. June 16.

LADY LOGIE *against* MELDRUM.

No 179.

In an improbation, a woman using a writ, was not allowed to a-

KATHARINE M'MILLAN Lady Logie, having obtained disposition from Mr John Hay her husband, pursues Meldrum as nearest of kin, for delivery thereof, who proponed improbation; and the pursuer being ordained to bide by, offered to do the same in these terms, that ' she truly received this disposition, as it now