

No 342. band's decease, might be proved by the creditor's oath, and that the bond was wholly uncanceled at that time, and after his decease might be proved by the heir's oath; which manner of probation was sustained to infer repetition to the relict, although the bond was cancelled; and the LORDS declared, that they would not respect any qualification, which the defenders should adject to their depositions, anent conditions made betwixt them and the relict, at the time of the said payment, but simply would take their oaths, upon the two points foresaid, which were sustained as relevant, viz. that she herself made payment since her husband's decease, and that the bond was then uncanceled.

Act. *Nicolson & Aiton.*

Alt. *Advocatus & Nairn.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 240. Durie, p. 434.

1632: July 7. LD. RENTON *against* LD. WEDDERBURN.

No 343.

Two sisters having right to a bond, as representing their father, the executions of an inhibition served thereupon were challenged in an improbation as false; and the pursuer succumbing in his probation, did afterward insist that his witnesses were bribed and corrupted by the two sisters. This allegiance was not found relevant to be proved by the oath of the one sister against the other sister's husband.

Fol. Dic. v. 2. p. 240. Durie.

. This case is No 224. p. 6787. *voce* IMPROBATION.

1676. June 8.

IRVINE *against* FORBES.

No 344.

A THIRD party founded upon a clause in a writ conceived in his favour. It was *alleged* against him, That the writ was never a delivered evident, which was offered to be proved by the creditor's oath. This was repelled; for since the writ was out of the debtor's hands, it was found, That the benefit of the clause could only be taken away by his oath in whose favour it was conceived.

Fol. Dic. v. 2. p. 240. Stair.

. This case is No 5. p. 7722. *voce* JUS QUÆSITUM TERTIO.