

No 264.

To conclude, it is of no import, what is alleged from the British act, 12th of Queen Anne; for that act determines nothing, as to the method of probation; and if there is a greater latitude in the manner of proof in England than here, it will not follow, that we are tied down to their manner of proof; the pursuer might, with the same reason, plead, that this case, as to the proof, ought to be tried by a jury, because such is the custom in England. All the British statute can be alleged for, as to this question, is, in so far as concerns the definition of the crime, what facts are comprehended under the law, and what not; for as to the manner of proof in the several parts of the united kingdom, for establishing the facts inferring the crime, that remains entire as formerly, to be prosecuted agreeably to the forms and genius of the law in each country.

“THE LORDS found the libel probable by other habile witnesses, as well as the instrumentary witnesses.”

Fol. Dic. v. 2. p. 233. Rem. Dec. v. 1. No 43. p. 84.

No 265.

1742. June 22. HAMILTON *against* BOYD, &c.

THE LORDS found, that in trying the crime of importing Irish linens, the offence was probable by the oath of the offenders.

Fol. Dic. v. 4. p. 162. Kilkerran.

* * * This case is No 70. p. 7335. *voce* JURISDICTION.

No 266.

That a document of trust was destroyed by the grantor, proveable by witnesses; and a *semi-plena probatio* of the tenor sustained.

1752. February 18. KENNOWAY *against* AINSLEY.

GEORGE AINSLEY, portioner of Newbottle, by disposition in 1721, conveyed his tenement of land and acres in Newbottle to his daughter Jean, with absolute warrandice. He thereafter, in 1723, conveyed the same subject to Robert Ainsley, his brother.

Of this second disposition William Kennoway, son and heir of the said Jean, pursued a reduction, as having been granted in trust, and under back-bond, and that Robert had unduly got up the back-bond, and destroyed it; and, for proof, appealed to the deposition of the deceased Peter Middleton, writer in Edinburgh, and of William Junkieson, merchant in Dalkeith, emitted in an exhibition of said back-bond pursued against Robert, and against the present defender, John Ainsley, to whom Robert had conveyed the subject.

In that exhibition Peter Middleton deponed, That George Ainsley, portioner of Newbottle, did, *in anno* 1723, dispoise and make over the subjects in Newbottle, and others belonging to him, in favour of Robert Ainsley, his brother; and that, of the same date, the said Robert granted back-bond to George, declaring the same to be in trust to him, for the behoof of the said