

*** 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