

As to Disimply the Deposition, the principal cause is pleaded *Stair* lb. 4th 46 § 16.

Objections against writings are founded either upon Nullities, Errors, or Exceptions that do against them. Now Relevant, the former, Competent, may be Effectually proposed if not actually verified, and the objection, upon that they are Recently come to his knowledge and such Emergent Allegations, the not instantly verified, will be admitted to proof, upon payment of a Multt to the other party for his Expence Act of Teston 20th Novemb. 1711 § 16. Off in the bill there be a Reformation of Objections, contra Proceca, these also tho in fact and such as cannot be instructed presently, will be received and a term assigned for proving thereof. When the writs produced are alleged to be false and feigned, the Lord some times Repeat the list of all objections, as Incompetent in this State of the process, and Refuse Action of Improbation in the ordinary way: as when the writs have lain some time in the Clerk's hands Unquarrelled, some times they admit Improbation by way of Exception, and Dismiss the Cause Instantly, and set in the Mean time procedure in the principal cause in which case the Lord assign a day to the proposer of Improbation, to Consign in the Clerk's hands a Certain sum (which is ordinarily forty pound) a pledge that he will prosecute his said cause; and the same day to the other party to abide by c. 10th Mandam. the writing, as a true and truly subscribed of the Date of it, by a Declaration under his hand. At which time the former Consigns the sum appointed, and the latter appears immediately before the Lord, in presence and abides by the writ either simpliciter, that is handed as a libel produced; or qualificate, that is Mandam. the not as libel, but as a paper truly found in his predecessor's Charter Chest, or Delivered to him by his Executors, or in the like qualified Manner. And then the Improver goes on as in the ordinary Action of Improbation. But the Lord sets on allow one to abide by a writ qualified; tho they do not hinder a party abiding by it, to protest that he had it bona fide in such and such a Manner. Vide *supra* page 1712, 1713, 1714.

What things may be proved by witnesses are set forth *supra* page 1879. In Advise the testimony of witnesses; the following Rules are offered 1st The Affirmative witness proves more strongly than a Negative witness, in Civil Matters; because the latter may innocently suppose what is false, tho his inadvertency or forgetfulness; Where as the former is in a more Innocently prove more than he knows. But in Criminal trials more faith is given to Negative witnesses in favour of the Accused, than to affirmative witnesses against them. *Prosp. Farin. de Testib. Quest. 65. n. 1568. Reg. 20. c. 1. p. 2.* Jurors may be more pregnant than Common witnesses. *Stair* lb. 4th 46 § 20. 2^d Great weight is laid upon the cause Scientia, the Reason of a witness's knowledge. If a witness Interrogated by the Judge upon his own free mind, tho not led; his Oath proves Not *Prosp. Farin. ibid. Quest. 70. n. 4.* A witness who is near to the fact proves more pregnantly what he heard and saw; than he who here and far at a Distance; or he who was well acquainted with the person of whom he Deposes than he that was not, but only did Express to hear where by he might be known. *Prosp. Farin. ibid. Quest. 65. n. 173.* *Stair* *ibid.* There is this Difference betwixt a Deposition before a man killed, and a Deposition concerning that which doth not perfectly strike the person, as that a person was drunk, mad, or of such an Age or Reputed a thief; that in the latter, and not in the former, the Ratio ficticia must be given whether a fact or not as being the only thing that proves the Matter of fact. *Prosp. Farin. ibid. Quest. 70. n. 93. 106. Junct. n. 39. 87.* 4th Witnesses who Depose upon a recent fact, are more pregnant than those who swear upon a fact more Ancient. *Stair* *ibid.* 5th A Witness who swears upon a fact felt falling under his foot as an Act of force; is more to be credited, than he who Deposes upon Inferences from the Emission of words, as that such a person did the thing wilfully. *Stair* *ibid.* 6th When Depositions are Contrary, the more non solus Numeranda *St. Ponderanda.* Greater Credit respect of great Reputation will be more credited than a greater Number of less Reputable; For in Adviseing Justice, more regard is had to the more credible witnesses, than to the Number of witnesses. *Stair* lb. 4th 46 § 20. *Tit. 43 § 19.* *Prosp. Farin. ibid. Quest. 65. n. 1148. Reg.*