

the L. of Wedderburn, That the officer of arms was not deforced, be reason that he offered him to prove that the goods, after the alleged away-taking of them frae the officer, were delivered to the Lady again be her own consent, and she content thairwith. To the which it was *answered*, it was contrare to the execution of the officer of arms; and the LORDS fand, that they wald admit na allegiance contrare to the execution of an officer, except they wald take to improve the same.

Fol. Dic. v. 1. p. 173. Colvill, MS. p. 130.

No 40.
plainly contrary to the execution of a messenger at arms, can be admitted, unless the party offer to improve the execution.

1667. June 4.

ZINZIAN against KINLOCH.

ZINZIAN, having poinded, pursued a spuilzie against Kinloch, having meddled with some of the poinded goods: The time of the advising the cause, the defender offered to improve the poinding *in data*. THE LORDS repelled the defence *in hoc statu*, reserving action; in respect the poinding was produced *ab initio*; notwithstanding it was *alleged*, that the defence was *noviter veniens ad notitiam*; which the LORDS did not respect; because the poinding being produced *ab initio* (as said is), the defender should have tried and might have had the same information which he has now of the same. In the same process, though the prices of the goods spuilzied were not proven, because it is to be presumed that the prices contained in poindings are not too high, and the LORDS having considered the poinding, found the prices low.

Clerk, *Haystoun*.

Fol. Dic. v. 1. p. 173. Dirleton, No 73. p. 30.

No 41.
An offer to improve a poinding *in data* repelled; and action reserved.

SECT. X.

Improbation how Proponable.

1614. December 21. MONTEITH against CARMICHAEL.

In an action betwixt Robert Monteith and William Carmichael, the LORDS sustained a decreet-arbitral, which was pronounced *in ipso termino* upon the day betwixt and the which the decreet should have been pronounced; and, in the same cause, the LORDS would not hear the said Robert Monteith to improve, by way of suspension, albeit he offered to improve the same by the oaths of the Judges, who were both present.

Fol. Dic. v. 1. p. 173. Kerse, MS. Fol. 180.

No 42.
The Lords refused to hear a party propone improbation of a decree-arbitral by way of suspension, though he offered to improve it by the oaths of the Judges, who were both present.