

1619. *February 17.* LO. HUNTLY *against* LO. FORBES.

No 277.

FOUND that it was probable by witnesses, that such a notary was Sheriff-clerk and in use to give sasines as Sheriff-clerk.

Fol. Dic. v. 2. p. 234. Kerse, MS fol. 77.

*** A similar case is reported by Kerse, 15th July 1615, Douglas against Cheeslie, No 4. p 3092. *voce* CONSUETUDE.

1627. *July 21.* ANGUS MACKRANNEL *against* MACKENZIE of Coul.

No 278.

IN an action between Angus Mackrannel and Mackenzie of Coul, a matter being admitted to the pursuer's probation, and he having produced witnesses for that effect; the defender *alleged*, That witnesses could not be received in the cause, because he would refer the matter to the pursuer's own oath. The pursuer *answered*, He could not be hindered of that lawful probation, which he had made choice of; yet the LORDS found he should clear it by his oath.

Spottiswood, (PROBATION.) p. 242.

1627. *November 16.* KIRKWOOD *against* INGLIS.

No 279.

If a summons be referred to be proved by writ or oath of party, the pursuer must condescend at the first term of probation which of the two ways he will choose.

Auchinleck, MS. p. 152.

1628. *March 12.* Lady DUNFERMLINE *against* The Earl Her SON.

No 280.

If there be more exceptions than one admitted to the defender's probation, he must take a time to them all by law, yet with consent of the party two diverse times were granted by the Lords for proving two several exceptions.

Auchinleck, MS. p. 152.

*** Durie's report of this case is No 2. p. 3048. *voce* CONQUEST.

1628. *March 22.* GEORGE KER *against* The TOWN of JEDBURGH.

No 281.

IN an action pursued by George Ker against the Town of Jedburgh, there being an exception admitted to the defender's probation, they raised an action

No 281. dent, which ran out in the whole terms, and a new term taken of the defender's own consent, to produce their whole probation; which being likewise come, the pursuer craved the term to be circumduced; and then the defender's declared they would refer the matter to the pursuer's oath, in place of all other probation: THE LORDS would not sustain it, because in the beginning the exception being only probable by writ or oath of party, the defenders used election at the first term, by using of an incident, and therefore they would not grant any further delay.

Spottiswood, (PROBATION.) p. 243.

No 282. 1628. July 11. Laird of FINDOURIE against PATRICK LIGHTOUN.

WRONGOUS intromission with teinds sustained to be pursued against the master who had uplifted the duty addebted by the tenants, both for stock and teind, and the intromission to be proved *prout de jure*.

Auchinleck, MS. p. 153.

No 283. 1628. July 29. WILLIAM SIMPSON against ———.

WILLIAM SIMPSON being convened for a term's house-mail, and the matter being referred to his oath, he confessed he was bound to pay L. 80 for a term's mail, but that he was only owing L. 52 thereof, in respect the pursuer had received in wine from the defender at sundry times L. 10 worth, and likewise had promised to pay him L. 18 for N. for whom he was caution to the defender. THE LORDS would have no respect to that deduction of the defenders, which they thought should have been proponed by way of exception (it being in effect a compensation) and that he could not swear his own exception.

Spottiswood, (PROBATION.) p. 244.

No 284. 1629. March 25. Duke of LENOX against Sir JAMES KNEILAND.

If a party take in hand to prove his exception or libel *scripto vel juramento partis*, and in the act of litiscontestation to have his election, he must, at the first term assigned to him, make his election.

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Auchinleck, MS. p. 156.