

to pass from his improbation after the term, unless he had done it before judicially; for they thought it a great vexation of the party to allow such a thing.

No 258.

Fol. Dic. v. 2. p. 199. Spottiswood, (IMPROBATION.) p. 168.

1630. *January 21.* DUKE OF LENNOX *against* SIR JAMES CLELAND.

No 259.

IN an incident raised by Sir James Cleland in the action between the Duke of Lennox and him, after three terms were past, one of the witnesses summoned by him for proving of the having of the writs libelled compearing, he offered to pass from that witness, and not to use him at all in the cause. THE LORDS, in respect they perceived his design was to have all the diligences run out, and then at last he would refer it to the party's oath, would not give way to it, but found that he should not be suffered to pass from that witness, unless he would either pass *simpliciter* from proving his incident by witnesses, and refer it presently to the defender's oath; or then that he would declare, that when all his diligences against witnesses were run out, he should not crave the defender's oath. Of these two he chose the former.

Fol. Dic. v. 2. p. 200. Spottiswood, p. 174.

. Auchinleck reports this case:

1630. *January 22.*—IN an incident where a witness is summoned and is sworn, and before he depone, the user of the incident stays the witness to depone, and declares that he will not use the witness, but desires that his incident may run on against other witnesses. THE LORDS would not suffer his incident to run on against other witnesses, to suffer him to refer his allegiance.

Auchinleck, MS. p. 100.

1630. *February 11.* LAIRD OF LAURISTON *against* LAIRD OF CULTER.

No 260.

IN an action of removing, pursued by the Laird of Lauriston against the Laird of Culter, the defender produced a sasine, and the defence proponed thereupon was repelled. The defender takes up his sasine, and the pursuer desires that he might have an instrument of production of the said sasine, containing the whole tenor thereof, seeing the same was produced in judgment, and interlocutor pronounced in the cause. THE LORDS found that the producer of the sasine might take it up, providing that he pass from his process, except the pursuer will take to improve the sasine.

Auchinleck, MS. p. 170.