

No 254. proved by witnesses, tending in effect both to prove payment to Barnbarroch, of 2000 merks, and to make him debtor for 1200 merks.

Clerk, Hay.

*Durie, p. 215.*

1628. February 23. KELLO against MACKISON.

No 255.

A MESSENGER being pursued for the debt owing by a party whom he had taken, and, instead of prison, put him in a private house, from whence he made his escape; the libel was found relevant, and that the employment and fact might be proved *prout de jure*.

*Fol. Dic. v. 2. p. 234. Durie.*

\* \* \* This case is No 2. p. 8887. *voce* MESSENGER.

No 256.

1628. November 28. BORTHWICK against CLERK.

A PARTY having denounced, in order to comprise, and the debtor suspending, and before the suspension was discussed, another creditor having comprised and been infest; the LORDS sustained the objection of collusion, relevant against the appriser infest, that he had procured the suspension by his own labour and expenses; but this was sustained to be proved only by writ or oath of party.

*Fol. Dic. v. 2. p. 233. Durie.*

\* \* \* This case is No-3. p. 2427. *voce* COLLUSION.

No 257.

1629. March 6. DUKE of LENNOX against HIS CHAMBERLAINS.

IN the action pursued by the Duke of Lennox against his Chamberlains, an exception being proponed, that they were stopped by the pursuer's own servants in the execution of a poinding; it was found that it should not be proved by witnesses, but by the officer's executions, bearing the hindrance made.

*Fol. Dic. v. 2. p. 234. Spottiswood, (PROBATION.) p. 243.*

No 258.

What proof admitted of knowledge, that a person dealt with was bankrupt?

1630. February 23. RITCHIE against PATERSON.

WILLIAM PATERSON being cautioner, acted in the books of Burrows for Hector Paterson, who was admitted a Flemish factor for Scots merchants, after sentence obtained before the Lords, by John Ritchie, merchant burghess of Edin-

burgh, against the said Hector, for payment of a sum indebted to him for certain merchandise, conform to his merchant-count, with the annualrent thereof, since the sum was due to be paid, which decret was given against him in absence; the said John Ritchie pursues the said cautioner, for payment of the said sum and annualrents, wherein the cautioner compear'd, and *alleged*, That this action, betwixt merchant and factor, should be pursued before the conservator, conform to the act of Parliament, Ja. IV. Parl. 6. cap. 81. This allegiance was repelled; and the LORDS found, that this, and the like pursuits may be pursued before the Lords of Session; for by that act it was only statuted, that such pursuits should be pursued before no other Judges out of the realm, but the conservator; and also the LORDS found, that the cautioner was not subject to pay annualrent for the money indebted by the factor, albeit the factor himself was decerned therein, as said is, he being absent and bankrupt.

Act. Miller.

Alt. Trotter.

Clerk, Gibson.

No 258.

1630. *March 4.*—It being alleged by the cautioner for the factor, that the pursuer was *in mala fide* to send any wares out of Scotland to Flanders to the factor, and thereby to make the cautioner liable therefor; for the pursuit was for the price of the wares sent to the factor by the pursuer, and for which decret was given against the factor before, because the said factor was a notour bankrupt before the sending away of the said wares, and was so known to the pursuer himself; so that this being known to him, the cautioner ought not to be answerable to him therefor; this allegiance of the pursuer's knowledge was found only probable by writ, or the pursuer's oath, and not by those who were alleged to have intimated and signified it to the pursuer, before the sending away of the wares, that he was bankrupt.

*Fol. Dic. v. 2. p. 233. Durie, p. 494. & 499.*

1631. *January 18.* JEAN HOME against The LAIRD of RENTON.

JEAN HOME charged the Laird of Renton, then Sheriff of Berwick, to take and apprehend the Laird of Wedderburn; and because he had disobeyed the charge, pursued him for the debt owing by the rebel to the pursuer. *Alleged*, He having been charged, while he was sitting in judgment in Eymouth upon some witches, he was not obliged to leave the Court and obey the charge. *Replied*, Ought to be repelled, because it was offered to be proved that the rebel was sitting beside him the time of the charge, and discoursing with him, which the pursuer offered to verify by the officer's executions, which bore, that when the charge was given, the officer designed the rebel to the Sheriff sitting hard by him; in fortification whereof, he offered to prove the verity of the executions by the witnesses inserted therein. *Duplied*, Ought to be repelled, because he offered to prove, by famous barons and ministes present in the Court, that

No 259.  
What proof  
of disobeying  
a charge to  
apprehend  
a rebel?