

1665. *January 27.*SCOT *against* FLETCHER.

No 227.

WITNESSES sustained to prove a *commodatum* though the defunct had possessed the subject lent for eight or nine years, which his representatives pleaded did presume property, which was redargued by the pursuer's proving *quomodo desiit possidere*.  
Stair.

\* \* This case is No 287. p. 11616. *voce* PRESUMPTION.

\* \* A similar decision pronounced 28th July 1680, Wilson *against* Tweedie and Towris, No 287. p. 11090. *voce* PRESCRIPTION.

No 228.

1671. *February 7.*HOME *against* SCOT.

A VERBAL submission and decree-arbitral may be thus proved, by the party's oath, that he did submit, and by the arbiters, that they did determine.

*Fol. Dic. v. 2. p. 230. Stair.*

\* \* This case is No 11. p. 8402, *voce* LOCUS POENITENTIAE.

1672. *November 28.*The PROCURATOR-FISCAL of the Sheriffdom of ROXBURGH *against* JOHN KER.

No 229.

Where march stones were set upon an alleged verbal submission, it was sustained to be proved by witnesses, that the party was *de facto* present when the stones were set.

JOHN KER being decerned by the Sheriff to pay 1000 merks for removing of the march-stone, which he himself had consented and submitted to be placed by Patrick Don and Robert Pringle, did suspend and intent reduction of that decree, upon this reason, That his consent and submission was not probable by witnesses, but *scripto vel juramento*; which was not sustained by the Sheriff. It was *replied*, That the submission being verbal, and the actual putting in of march-stones having immediately followed thereupon, the same was probable by witnesses, it not being usual to put such consents in writ.

THE LORDS did find the reason relevant, unless it were offered to be proved by the suspender's oath, that he did not consent to the arbiters' power of placing the march-stones, or that it were offered to be proved by witnesses, that he was not actually upon the place.

*Fol. Dic. v. 2. p. 230. Gosford, MS. p. 281.*

No 230.

1678. *July 17.*LORD PITSLIGO *against* PATON.

THE LORDS, after two terms for proving the libel, admitted this poor man to a defence, and found this defence relevant, that not so much as a tack for a year could be proved by witnesses, because it was a promise; and where the