

1673. *July 17.*KINCAID *against* DICKSON.

MR JOHN KINCAID having pursued Mr Alexander Dickson, for payment of a sum promised to the pursuer's wife, when she was wife to the defender's nephew, and having deponed, that he did declare his purpose to give such a sum to his nephew's wife, and such a sum to his children, if he behaved well in his affairs; and being interrogated whether by any missive letters he had engaged for the same, he deponed that he knew of no missive letters, in which he had done any more than declared his purpose as aforesaid, and if all his letters were laid together, he believed it would make it appear so.

THE LORDS found, That this oath imported no obligation or promise, but only the expression of a resolution, and refused to reserve to the pursuer to prove the promise by the defender's missives, albeit he was not positive that they bare no such promise, but that he knew not they bore the same, because the pursuer having chosen his probation by the defender's oath, wherein he was positive that he made no promise, they would admit of no other probation.

Fol. Dic. v. 2. p. 201. Stair, v. 2. p. 181.

No 274.

Oath of a party, as to a promise, being positive, denying it, but bearing, that being interrogated, if he had written any letters concerning a promise, he deponed he remembered none that bore then a resolution, the letter was not admitted thereafter to prove the promise.

1676. *June 22.*IRVINE *against* IRVINE.

THE quantities and prices in a decret being proved by witnesses, it was not found relevant in a suspension to prove by the charger's oath, that the quantities and prices mentioned in the proof were exorbitant, because this tended to infer perjury of the witnesses.

Fol. Dic. v. 2. p. 201. Stair.

No 275.

* * * This case is No 218. p. 12112.

1677. *January 27.*THOMSON *against* CURRIE.

IN a pursuit at the instance of Sir Henry Thomson against Provost Currie, liti-contestation being made, wherein it was referred to Thomson's oath, that a ship in question was delivered back in as good condition as she was received; and he having deponed that another person, one of the owners of the ship told him, that she was not in as good condition; which oath being to be advised, it was *alleged* for Thomson, That his oath proved not the allegiance, and therefore he was liberated from the point to be proved by his oath, seeing our law allows not probation, both by oath and witnesses, as to the same point, and that probation by oath was here chosen by Currie, and not proving. It was *answered*, That where the oath is not positive, but leaves the matter where it

No 276.

After probation by oath, if not positive, but *ex auditu*, another probation may be admitted *ex officio*.