

of party; because the said Laird in the justice ayre protested, that he might have all his defences in civil judgment, if any man afterwards pursued him for crimes, and because the confessions in such justice ayres are commonly made *ex justo metu*; and the said Vicar could not prove his allegiance before the Lords otherwise, albeit he had produced diverse witnesses to that effect before the Lords, therefore the LORDS absolved.

Fol. Dic. v. 2. p. 350. Sinclair, MS. p. 40.

No 3.
proof against
him *ad civilem*
effectum, as he
had reserved
by protest all
defences com-
petent before
a civil judge.

1552. November 16. HOME against SCOT.

IN the action pursued by Elizabeth Home, spouse to C. Cranston, against Scot of _____, for withholding from her the terce of the lands of _____, the space of seven years or thereby, according to the confession made in the act of adjournal raised thereupon, the said Scot said, that he should have absolvitor from certain years libelled, because the said lands were bruiked and holden waste by _____, in respect that he made protestation for the part of Elizabeth in the said justice ayre, for all his lawful defences. To which it was *replied* by the procurator of the said Elizabeth, That the said exception reserved all such defences as might stand with the concession made, likeas discharges, transactions, or such like, but not the defences, which were contrary to the confession. In respect of which reply, the exception was repelled.

Fol. Dic. v. 2. p. 350. Sinclair, MS. p. 114.

No 4.
In conformity
with No 2.
supra.

1583. February. EARL of ARRAN against CRAWFORD.

A PARTY, when pursued in a removing, having declared, That he was tenant not to the pursuer, but to a third party, he having been pursued in the same action thereafter at the instance of that same third party, the above judicial confession was found to prejudice him, and to make up the pursuer's title.

Fol. Dic. v. 2. p. 348. Colvil. Spottiswood.

No 5.

. This case is No 4. p. 13784, *voce* REMOVING.