

No 232. alleged, the Laird of Glenbervie took in hand to prove, by the notary and witnesses contained in the instrument of offering and intimation, that the gift of marriage was sufficiently intimated to him, and read, at least offered to be read, although that such words *per expressum* were not contained in the said instrument of intimation; which being admitted to Glenbervie's probation, he summoned the notary, the witnesses, and the party, to give oath *de calumnia*, and at the day of compearance, he would have referred the same to his oath of verity, so that he would give *juramentum veritatis* in that cause. Udney refused, because the pursuer had taken in hand to prove his allegiance by the notary and witnesses contained in the instrument foresaid, and produced them to this effect to farther proving thereof; which allegiance of the Laird of Udney was found relevant by the LORDS, and he ought not to give *juramentum veritatis*, in respect produced, as said is.

*Fol. Dic. v. 2. p. 200. Colvil, MS. p. 250.*

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No 233. 1575. February 15. LAIRD OF BARGENY against ———.

THE Laird of Bargeny pursued ——— for spoliation of certain goods. The defender proponed a good peremptory exception; and because no day was assigned or taken to prove the said exception, the pursuer would have passed from that instance, but the defender alleged he should have absolvitor, he proving the peremptory; which allegiance of the defender, the LORDS found relevant, and repelled the pursuer's allegiance; and decerned, that from the time litiscontestation was made, that is, when the defender proponed a peremptory exception, and the same referred to his probation by interlocutor, that the pursuer might not renounce the instance, nor gang frae the summons as is libelled, albeit the defender had taken no time to prove his exception, but absolvitor should be given therefrom, the defender proving the exception, or else the pursuer should pass from the whole cause.

*Fol. Dic. v. 2. p. 196. Colvil, MS. p. 252.*

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1583. February. LUNDIE against GRAY.

No 234. IN an action pursued by the Lady Lundie against Helen Gray, after that there was a reply proponed and admitted, taking away an exception, the pursuer would have gone from the reply. It was *answered*, That litiscontestation was made in repelling the exception, and admitting the reply. It was *answered*, That there could be no litiscontestation made in repelling of the exception, and admitting of the reply, except there had been a term assigned. THE LORDS found, by interlocutor, That there could not be litiscontestation,