

No 216. alleged by the other party, That he was in possession before the warning; so the question was anent the priority of probation. There was *alleged* for the pursuer a practick of before, 22d November 1580, between Allan Coutts younger and Patrick G———, (See APPENDIX), where the exception was proponed and repelled. It was *alleged*, That the practicks were not alike, for Allan Coutts libelled possession before warning, and so took away the exception, which was not contained in this libel. THE LORDS pronounced by interlocutor, after the matter had been sufficiently reasoned and heard over again, under the pain of amand, that the reply should be admitted, and repelled the exception; licet nonulli dominorum in contraria fuerunt opinione, that an exception being a relevant exception to have stopped a warning, should also have stopped the succeeding in the vice; and the decret of removing was given *parte non comparente*.

In the same action, it was *excepted* by the defender, That he ought not to have been decerned to have succeeded in the vice, because the pursuer promised to let him sit still for the space of a year. The exception being found relevant by the Lords, the question was, whether the same should be admitted to be proved by writ or witnesses. THE LORDS found by interlocutor, that it being an allegiance of the promise of an year, the same might be proved by witnesses, or *prout de jure*.

*Fol. Dic. v. 2. p. 231. Colvil, MS. p. 313.*

\* \* Similar decisions were pronounced, May 1582, Monteith against Tenants, No 2. p. 8397, *voce* LOCUS POENITENTIAE, and 20th March 1629, Affleck against Mathie, No 7. p. 5409, *voce* HEREZELD.—There is a case likewise to the same effect in Erskine MS. 13th January 1592, Binning against Douglas. That MS. is not in the Advocates' Library. See APPENDIX.

1609. *January.*

MIDDLEMAS *against* FORD.

No 217.

IN an action pursued by Middlemas against Hector Ford for the price of an horse, exceeding L. 100, the LORDS found it might be proved by witnesses, and prescribed not, albeit it was not pursued within three years.

*Fol. Dic. v. 2. p. 229. Haddington, MS. No 1533.*

1609. *November 23.*

MONRO *against* MONRO.

No 218.

Found in conformity with the above.

HUCHEON MONRO, son to Monro of Tarlachie, and Monro his assignee, pursued the relict of Hucheon Ross to deliver to him twelve great cows and a bull, which the said Hucheon Ross had disposed to him, and in token thereof had