

present, and defender's procurator offered to make faith, that the said exception was newly come to his knowledge, and offered to refer the verity thereof to the pursuer's oath, they found the exception relevant to be proved by the party's oath, which being sworn, denied the same.

No 237.

*Fol. Dic. v. 2. p. 200. Haddington, MS. No 1657.*

1609. November 28. HENDERSON against GRAHAM.

In an action pursued by Thomas Henderson against Graham, sister to the Laird of Inchbrakie, relict and universal intromissatrix with the goods and gear of umquhile Colonel of Condie, her husband; she *excepted*, That for the utensils and domiciles, she could not be reputed universal intromissatrix, because her intromission was necessary. It was *replied*, That the pursuer offered him to prove, that she had intromitted with others the defunct's goods, by and attour the domiciles, whereof he gave in a particular inventory. In respect whereof, the summons and reply being found relevant, and a term assigned *in termino probatorio*, the pursuer declared, that he would condescend upon farther intromission by the defender with the defunct's goods, to wit, threescore ten pounds of annualrent, which he would refer to her oath of verity, and would make faith, that the same was newly come to his knowledge; notwithstanding whereof, the LORDS, in respect of the state of the process, would not suffer any farther to be proved than was contained in the act of litiscontestation.

No 238.

A pursuer having made litiscontestation upon the defender's intromission, he was not *in termino probatorio* allowed to condescend upon any other particular intromission than was contained in the act, although he offered to refer it to the defender's oath of verity.

*Fol. Dic. v. 2. p. 197. Haddington, MS. No 1658.*

1610. January 16. LAIRD of SMETON against DICK.

HE who after litiscontestation summoned witnesses to prove his libel, after one of the witnesses was received before his examination, was permitted to refer his summons to the defender's oath of verity.

No 239.

*Fol. Dic. v. 2. p. 200. Haddington, MS. No 1736.*

1617. July 5. FINLAYSON against GRAY.

In an action by Margaret Finlayson and John Gray, the LORDS would not suffer the party to refer his reply to her oath after the concluding of the incident.

No 240.

*Fol. Dic. v. 2. p. 200. Kerse, MS. fol. 256.*