

by my Lady, the Sheriff should sit still in the room, in hope of an excambion of other lands which my Lady was to make with the said Sheriff. This being found relevant and admitted, it was *alleged* by my Lady's advocate, That the same could in no manner of way be proved but per scripta aut juramentum partis. It was *alleged* upon the other part, That that thing which would take away a decreet, whether it was for one year or more years, could not be proved but by writ aut juramentum partis; which was so found by the Lords, and the matter referred simpliciter to the oath of my Lady.

No 53.

Fol. Dic. v. 2. p. 219. Colvil, MS. p. 362.

1605. July 23.

Laird of SCHAW against PALMER.

No 54.

IN an action betwixt the Laird of Schaw and Palmer, it was *excepted*, That Palmer should not remove, because he had a tack of the said lands for terms to come. He was urged to condescend when the tack was set, and for what duty, because the pursuer would offer him to prove that the defender had paid to him a greater duty, and so had in effect renounced his tack. It was *answered*, That he could not take away his tack by probation of witnesses. THE LORDS found that they would not receive that allegiance of paying of greater duty to prejudice the tack, unless it were proved by writ or oath of party.

Fol. Dic. v. 2. p. 220. Huddington, MS. No 939.

1610. February 8.

WINRAHAME against CROMBIE.

No 55.

AN obligation of an hundred merks found, by interlocutor, to be innovated by an act in the books of Leith, whereby the debtor warded, acted himself to pay L. 90, albeit the act had no relation to the obligation and debt therein contained; and it was admitted to be proved by witnesses, to wit, the Bailie and Clerk of Leith, that the act was made for payment of the sum of the obligation.

Fol. Dic. v. 2. p. 220. Haddington, MS. No 1795.

1611. January.

KER against HOME.

No 56.

IN an action pursued by William Ker of Middlemistwalls *contra* John Home of Slaigdane, the LORDS found that an assignation of a mutual contract, *ad hunc finem*, whilk the liferenter had subscribed the contract, relevant to be proved by witnesses inserted; and if the same were proved, found that either the said John

No 56. Home of Slaigdane behoved to procure her subscription, or otherwise the said minute behoved to expire.

Fol. Dic. v. 2. p. 218. Kerse, MS. fol. 44.

. Haddington reports this case :

1611. *January 17.*—A MINUTE of contract of the alienation of the liferent of a wife, containing her own name and her husband's, and being only subscribed by the husband, bearing a clause of extension ay while all the parties be sure, it will not be found that the buyer will be sure unless the wife subscribe, and caution offered by her husband to warrant the cloke, will not supply that, because it is but a ground of an action, and no perfect security. A notary receiving in his hands an evident deposited and to be kept by him while diverse conditions be performed, if he deliver the writ to the party in whose favour it is made before the conditions be performed, and that thereby it be made the party's evident, albeit thereby the conditions of the consignation or the evidents cannot be proved against the haver of the evident but by his own oath, yet the said conditions may be proved against the notary by the witnesses inserted, and being proved, he will be condemned in the damage and interest of the party.

Haddington, MS. No 2097.

No 57.

1611. *June.*

GRIERSON *against* HERRIES.

IN an action by Sir William Grierson of Lag and George Herries, for poinding of the ground for an annualrent of L. 10, the LORDS sustained a renunciation to be proved by witnesses *omni exceptione majores*, anent the delivery of the money, and of the evidents to be cancelled and destroyed, in favour of the defender, who was infest in the lands in liferent, by virtue of the contract of marriage.

Kerse, MS. fol. 259.

No 58.

1616. *March 19.*

EDMONSTON *against* HAMILTON.

IN a reduction of a decret of removing, pursued by William Edmonston against John Hamilton of Kinaber, the LORDS found a reason relevant upon a promise made, that he should bruik for an year, which promise was made after the warning, and before the sentence, relevant to be proved by witnesses.

Fol. Dic. v. 2. p. 220. Kerse, MS. fol. 189.