

delivered to him one of the cows, reserving the profits of the said cows to himself during his lifetime, and after his decease the said cows and profits to pertain to the said Hucheon Monro. It was *alleged*, That the pursuer's title could give him no action, being a disposition subscribed by one notary, where the party could write. THE LORDS considering that the disposition of so many cows might have been proved by witnesses, they sustained the summons for the cows and bull, but not for any profits preceding this decret.

No 218.

Fol. Dic. v. 2. p. 229. Haddington, MS. No 1650.

1616. December 11.

A. against B.

A COMMAND to do service after a warning, which implied passing from the warning, found not relevant to be proved by witnesses.

No 219.

Fol. Dic. v. 2. p. 231. Kerse.

*** This case is No 59. p. 12303.

1618. December 17.

WILKIES against GORDON.

ACTION for payment of L. 20 Sterling, for the price of deals bought by his bond. *Alleged*, He promised never to seek the price, if he sold any more of his deals which he then had in his ship within the bounds of Strathnaver, whereby the defender might be prejudged in the sale of his deals; and true it is, that he sold 1000 deals in the town and about to others. THE LORDS found the allegiance relevant to be proved, the condition *scripto*, and the selling *prout de jure*. Term circumduced, and decerned.

No 220.

Clerk, Hay.

Fol. Dic. v. 2. p. 230. Nicolson, MS. No 465. p. 321.

1627. January 16. DAWLING'S BAIRNS against LO. BALMERINOCHE.

IN an action betwixt the Bairns of Robert Dawling and Lord Balmerinoch, for payment of 400 merks, for the yearly mail of a dwelling-house set to the Lord Balmerinoch, pertaining to the said Robert and his bairns, and possessed by the said defender; the LORDS found, that the condition anent the payment of that yearly duty of 400 merks, for the mail of the said land, ought to be proved by writ or oath of party, and was not admissible to be proved by witnesses, being in a matter above L. 100.

No 221.

Act. Belshes.

Alt. Lermont.

Clerk, Gibson.

Fol. Dic. v. 2. p. 231. Durie, p. 256.