

No 2.

1542. December 9. The POOR WIFE of BROUGHTON *against* M'CALL.

GIF ony persoun alledge him to have bene wrangouslie accusit be ane uther in judgment, of thift, or ony uther crime, and to be quyte and clengit thair of, the samin may not be provin be the judge, clerk, memberis of court, persounis of inqueist, or uther famous witnessis; because judicial actiounis and actis may not be provin be witnessis, bot be writ.

Balfour, (OF PROBATION BY WRIT.) No 24. p. 366.

* * * Sinclair reports this case :

THE LORDS, by interlocutor, decerned, that *acta judicialia* might not of the practice be proved, but *per scripta*, and, therefore, a cause moved by a poor woman of Broughton against John M'Call, for accusing of her wrongfully of certain theft, of the which she was made quit by an assize, and, therefore, the said John ought to pay her, by the act of Parliament, L. 10 for amends, the LORDS would not admit the Judge and Bailie, and certain other famous men that were upon the said woman's assize, to prove, that the said John had accused her.

Sinclair, MS. p. 44.

No 3.

1584. March. BISHOPTON *against* ———.

THE Laird of Bishopton pursued reduction of a horning, where he was put to the horn for not finding caution in law-burrows, according to the act of Parliament. The reason of reduction was, that the officer had committed him to the horn, and had received no making of faith, that the party complainer feared him for bodily harm, according to the order prescribed in the act of Parliament. The executions of the officer being produced, there was no such execution that there was any faith made to the officer. The other party offered them to prove the same per testes et dummodo prout de jure. THE LORDS would not admit nor receive other probation than was contained in the execution already produced by the officer.

Fol. Dic. v. 2. p. 212. Colvil, MS. p. 393.

No 4.

1622. July 3. FRENCH and LORD THORNYDIKES *against* CRANSTON.

A REQUISITION made to an heir was found not valid to infer the double of the marriage, because, at the making the said requisition, the donatar had not the gift in his hand, nor did he show or exhibit it, at least the instrument

bore it not, although it was offered to be proved by witnesses that it was shown.

No 4.

Fol. Dic. v. 2. p. 212. Durie.

* * * This case is No 7. p. 2179. *voce* CITATION.

1628. November 7. MAXWELL *against* LD INNERWICK.

No 5.

FOUND a requisition null, because the procuratory was not read; and albeit the instrument was thereafter mended, and also referred to the Laird of Innerwick's oath that the procuratory was read, yet the LORDS would not sustain the requisition.

Fol. Dic. v. 2. p. 212. Kerse, MS. fol. 85.

1637. March 28. SCOT *against* SCOT.

ONE James Scot, son to Robert Scot of Satchels, being donatar to the escheat and liferent of the said Robert his father, Robert Scot, eldest son to the said Robert Scot elder, and brother of the said James, begotten upon a prior wife, pursues his said brother, donatar foresaid, for reducing of the horning, whereupon his father's escheat was taken, to the effect that he might have access to his father's liferent, conform to a contract, whereby he had disposed his liferent to him, and of the effect whereof he was prejudged by the said escheat, which the second son declared, he used for maintenance of his aged father, who wanted all other means whereby to live. The reason of reduction was, that the horning purported not, that six knocks were given at the rebel's dwelling-house, as in custom is requisite; and that the register of hornings, wherein this horning and executions are inserted, purported no such record of adhibiting of knocks. And the defender producing his horning, in the margin of the execution whereof were added these words, viz. (After the messenger had used six knocks at the party charged his dwelling-place,) at the verity, and truth of the doing whereof he abode, as it is now produced; for albeit he granted, that he had caused the messenger subscribe this margin since the registration, yet it was truly done; and also the words foresaid in the margin were extant so written, although then not subscribed at the time when the horning was presented to be registered, which the clerk-keeper has not inserted in the register, because it was not then subscribed; and the pursuer *replying*, That seeing it was not registered with that clause, and is confessed by the party was not then subscribed, the same therefore ought not to subsist; the LORDS sustained the horning, notwithstanding of the reason, the defender proving by the clerk-keeper of the register, and his servants, that when the horning was presented to be registered, the same had the foresaid marginal clause standing then, as if

No 6.

An execution of a horning, where the six knocks were mentioned only on the margin, was allowed to be supported by witnesses.