

1616. December 11.

A. against B.

No 59.

FOUND a command to do service after a warning could not be proved by witnesses, but by writ or oath of party.

Fol. Dic. v. 2. p. 220. Kerse, MS. fol. 239.

1622. July 26.

DAVIDSON against GORDON.

No 60.

IN the action betwixt Alexander Davidson and John Gordon of Buckie, the LORDS found that a man might propone two exceptions of one nature and substance against the pursuit, and get them to his probation; but *in termino*, if they tended both to one end, and the one might be writ, and the other be oath of party, it was necessary to make election of the one form of probation; for they would not take the party's oath of verity, and thereafter receive probation by writ, super eodem subjecto in substantia, propter periculum et scandalum perjurii. In that same cause, it was found that ane bond to pay ane soume of money bearand no cause, and the user refusing to condescend upon the cause, the maker offerand to prove the cause by the witnesses inserted in the bond, and in other authentic writs, and that the cause alleged by him took away the said band, the Lords fand that it might be proved by the witnesses inserted.

Fol. Dic. v. 2. p. 221. Haddington, MS. No 2662.

. Durie's report of this case is No 72. p. 2619. *voce* COMPENSATION.

1623. July 11.

TERENCE against STEELE.

No 61.

REASON, the charger, in a friendly communing with the suspender's principal and cautioners, acknowledged the inhability of the principal to pay the 102 merks contained, promised to give down 20 merks, whereupon the principal delivered them five head of goods to one of the cautioners, who immediately delivered the same to the charger for the remanent of the sum, whilk goods were worth 80 merks, and were received by the charger, and offers to prove the reason by witnesses who were present at the delivery, and otherwise knew the same to be delivered to the charger by the cautioner, in name of the principal. Finds the reason relevant, and assigns a day, and ordains letters to summon witnesses on probation, and to produce such writs, &c.

Transaction of giving down a sum in a bond, and delivery of goods worth the superplus, found probable by witnesses, altho' in a suspension.

Clerk, Durie.

Fol. Dic. v. 2. p. 220. Nicolson, MS. No 472. p. 324.