

1624. February 28. GLADSTANES *against* HAMILTON.

IN an action of violent profits pursued by Gladstanes *contra* Hamilton, and certain others, wherein the defenders were absent, and the summons was referred to the parties' oath of verity, who were also in absence holden *pro confessis*; the LORDS would not decern for the whole quantity libelled, albeit the parties were holden as confest, upon the whole quantity; but found, that in this, and all the like cases, when this case occurred, that the pursuer shall be holden before sentence to give his oath *ex credulitate*, upon the quantity of the yearly profits which he acclaims, and for the which he seeks his sentence, and that no decret ought to be given in such matters, except the pursuer, by his oath, swear and depone upon the said quantity.

Act. *Lawtie.*

Alt. *Absent.*

Clerk, *Scot.*

*Fol. Dic. v. 2. p. 13. Durie, p. 115.*

No 40.

Found in conformity with Bulmer *a-*gainst Williamson, No 37. P. 9377.

1625. January 13. LO. DUFFUS *against* MONROS.

IN an action of ejection for a salmon-fishing, pursued at the instance of the Lo. Duffus *against* Monros, and for payment of the profits since the ejection, the summons being proven, and the special quantity of the profits of the fishings being also clearly proven, the LORDS, nevertheless, before they would decern for that special quantity which was proven, and albeit the defenders were likewise holden as confest, for not giving their oaths *de calumnia*, yet, at the advising of the process, found that the pursuer ought to give his oath *de credulitate*, upon the quantity of the profits, and would not pronounce sentence thereupon, until the time he, by his oath foresaid, deponed that the profits extended to the quantity, for the which the summons was proven; and this was found, albeit no party defender compeared in the cause.

Act. *Belibet.*

Alt. *Absent.*

Clerk, *Gibron.*

*Fol. Dic. v. 2. p. 13. Durie, p. 156.*

No 41.

Found in conformity with Bulmer *a-*gainst Williamson, No 37. P. 9377.

1628. January 26. L. DRUM *against* TENANTS of L. LESMORE.

IN a suspension betwixt L. Drum and some Tenants of the L. Lesmore, for suspending of a decret of spoliation of teinds, obtained before the Commissaries of Aberdeen *against* them, by L. Drum, the quantity whereof was referred to their oaths, and they holden as confest upon the quantity libelled, and, for not compearance, a decret was given conform to the libel, which they suspended, because it was manifestly known, that such quantities of corns never

No 42.

Found in conformity with Bulmer *a-*gainst Williamson, No 37. P. 9377.