

No 356. 1688. *July* —. URQUHART *against* NAIRN.

FOUND that as a husband could not be prejudged by his wife's oath, neither could he be prejudged by her being holden as confest.

Fol. Dic. v. 2. p. 240. Harcarse, (OATHS.) No 747. p. 211.

DIVISION III.

Public Instrument, how far Probative.

SECT. I.

Messengers Execution.

No 357. 1611. *July 9.* PHILORTH *against* PITSLIGO.

IN comprising, searching may be at one place, and thereafter denunciation, and thereafter searching at another place, and denunciation, so it is no cause of reduction, albeit some searchings be after some denunciations; neither will it be admitted to the debtor's probation, in his reduction, that there were moveables extant the time of the searching, worth the debts comprised for, in respect of the officer's execution bearing the contrary: A comprising will not be reduced, because the lands are much more worth than the sums comprised for.

Fol. Dic. v. 2. p. 241. Haddington, MS. No 2270.

No 358. 1626. *June 29.* HALYBURTON *against* PROVOST of JEDBURGH.

IN an action against a Magistrate for not taking a rebel, after he was charged for that effect, the LORDS found, that the summons, bearing the rebel to have been in the Magistrate's company the time of the charge, behoved to be other-

wise proved than by the messenger's execution, which was found not probative. No 358.

Fol. Dic. v. 2. p. 242. Durie.

* * * This case is No 17. p. 11694. *voce* PRISONER.

1628. June 20. Mr SIMEON RAMSAY *against* PILRIG.

No 359.

PILRIG craved an inhibition, used at the instance of Mr Simeon Ramsay against him, to be reduced, in respect the same was neither used against him personally, nor at his dwelling-house; for in so far as the executions bore to be done at his dwelling-house at Pilrig, he offered to prove that he had his actual residence, for the space of a quarter of a year before, immediately preceding, in Glendovan, he and his family. *Alleged*, That the defender should be assolzie'd from the reason of reduction, because he offered to prove, that the pursuer had his dwelling in Pilrig, with his family, for the space of forty days, immediately preceding the inhibition. THE LORDS preferred the excipient in the probation, in respect that his allegiance tended to make a lawful act subsist, which the other sought to invalidate.

Spottiswood, (PROBATION.) p. 239.

1628. November 7. ROBERT BRUCE *against* PATRICK BRUCE.

No 360.

Ante conclusum in causa, the defender, although he has used no diligence to prove his exception, will be heard to refer it to the pursuer's oath of verity. Conform hereunto, in an action pursued by Mr Robert Bruce against Patrick Bruce, the defender having offered to improve the executions, and having done no diligence at the term, was suffered to refer it to the pursuer's oath of credulity, *non enim erat ejus proprium factum*.

Spottiswood, (PROBATION.) p. 241.

1630. January 19. STEWART *against* SHARP.

No 361.

MR WILLIAM SHARP, Sheriff-clerk of Brechin, pursued by one Stewart, for exhibition of letters of relaxation, with the executions thereof, which were alleged delivered to the said clerk, to be registered *anno* 1616, the clerk produced the letters, but denied that ever he saw the executions. The pursuer offered him to prove the delivery of the executions to the clerk, by witnesses. THE