

thereof, before he had set his hand thereto, he being then major, *et rei sue providus*, and not doing that, it might be presumed, that he had allowed whatever was therein inserted, and consented that the maker should insert therein whatsoever he pleased: Which was repelled, and the allegiance against the discharge sustained to be proved by the parties oath, as said is.

No 3.

Act. *Kinross.*

Alt. ———

Clerk, *Scot.**Fol. Dic. v. 2. p. 13. Durie, p. 241.*1627. *March 13.*OLIPHANT *against* KERR.

AN executor-testamentar takes another assignee to a certain debt owing to the defunct. The assignee pursues the assignee's debtor, and refers the verity to the defender's oath. The defender refers the same back again to the pursuer's oath, who being but assignee, gave oath, according to his knowledge, the debt was true; which the LORDS would not allow; but ordained the defender's oath to be taken.

No 4.

*Auchinleck, MS. p. 143.*1627. *June 25.*LAIRD OF TORRIE *against* MR DAVID WARDLAW.

A SUMMONS being referred to a defender's oath, and he giving in a qualified oath, the pursuer resiles and takes up the process, being content that the defender took protestation against him.—THE LORDS ordained the pursuer either to take the defender's oath presently, or, otherways they declared he should not be holden to give his oath in this cause hereafter.

No 5.

*Auchinleck, MS. p. 143.*1628. *March 20.*HUNTER *against* CAIRNS.

A SPUIZIE of a horse being pursued, the defender *alleged*, That the horse was restored to the pursuer; which being referred to his probation, he did not prove it clearly, *sed per simplicem probationem*; yet the LORDS having consideration of the matter, and the persons of the parties, ordained the defender to give his oath on his exception.

No 6.

Auchinleck, MS. p. 144.