

delivered to him one of the cows, reserving the profits of the said cows to himself during his lifetime, and after his decease the said cows and profits to pertain to the said Hucheon Monro. It was *alleged*, That the pursuer's title could give him no action, being a disposition subscribed by one notary, where the party could write. THE LORDS considering that the disposition of so many cows might have been proved by witnesses, they sustained the summons for the cows and bull, but not for any profits preceding this decret.

No 218.

*Fol. Dic. v. 2. p. 229. Haddington, MS. No 1650.*

1616. December 11.

A. against B.

A COMMAND to do service after a warning, which implied passing from the warning, found not relevant to be proved by witnesses.

No 219.

*Fol. Dic. v. 2. p. 231. Kerse.*

\*\*\* This case is No 59. p. 12303.

1618. December 17.

WILKIES against GORDON.

ACTION for payment of L. 20 Sterling, for the price of deals bought by his bond. *Alleged*, He promised never to seek the price, if he sold any more of his deals which he then had in his ship within the bounds of Strathnaver, whereby the defender might be prejudged in the sale of his deals; and true it is, that he sold 1000 deals in the town and about to others. THE LORDS found the allegiance relevant to be proved, the condition *scripto*, and the selling *prout de jure*. Term circumduced, and decerned.

No 220.

Clerk, Hay.

*Fol. Dic. v. 2. p. 230. Nicolson, MS. No 465. p. 321.*

1627. January 16. DAWLING'S BAIRNS against LO. BALMERINOCHE.

IN an action betwixt the Bairns of Robert Dawling and Lord Balmerinoch, for payment of 400 merks, for the yearly mail of a dwelling-house set to the Lord Balmerinoch, pertaining to the said Robert and his bairns, and possessed by the said defender; the LORDS found, that the condition anent the payment of that yearly duty of 400 merks, for the mail of the said land, ought to be proved by writ or oath of party, and was not admissible to be proved by witnesses, being in a matter above L. 100.

No 221.

Act. Belshes.

Alt. Lermont.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 231. Durie, p. 256.*

\*\*\* Spottiswood reports this case :

No 221. THE Children of umquhile Robert Dawling pursued my Lord Balmerinoch for 400 merks of house-mail set to him by their father. THE LORDS found, that the quantity of the mail alleged extending to 400 merks yearly, could only be proved by writ (as former discharges) or oath of party.

*Spottiswood, (PROBATION.) p. 241.*

1628. March 5.

DEACON of the HAMMERMEN in GLASGOW against CRAWFORD.

No 222. THE Deacon of the Hammermen in Glasgow pursued Crawford in Fordanhill, as heir to his father, for the sum of L. 100 borrowed by his umquhile father from the said Deacon upon his bond ; which bond being lost, the pursuer craved to prove the tenor thereof ; which summons the Lords would not sustain to prove the tenor, but to pursue for the sum. The defender *alleged*, That this sum could not be proved but by writ or oath of party, conform to the daily practice and statute of the Lords, which being read, bore a sum exceeding L. 100, not to be proved by witnesses or subscription of one notary, and so decerned the said sum may be proved now and in all time coming by witnesses.

*Fol. Dic. v. 2. p. 230. Auchinleck, MS. p. 153.*

\*\*\* Durie's report of this case is No 130. p. 2247, *voce* CITATION.

1628. November 26.

STIRLING against M'PHADRICK.

No 223. IN a pursuit Stirling against M'Phadrick, for delivery of four mares, with four foals yearly, by the space of three years, or the prices thereof libelled, conform to a paction made betwixt the parties for that effect, when the mares were delivered, and put by the pursuer to the defender in grazing ; this was sustained to be proved by witnesses, and it was not found necessary that the pursuer could be compelled to refer the summons or paction therein contained to the party's oath, albeit the action was not pursued till three or four years were past after the alleged time of the paction and delivery of the mares.

Act. *Nicolson.*

Alt. ———.

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 230. Durie, p. 401.*

\*\*\* Auchinleck reports this case :

JAMES STIRLING agreed with John M'Phadrick to graze him four mares for payment of a certain grass-mail, and pursues him, conform to the said agreement, to make restitution of the said mares and foals by the space of three