

1629. February 10. KEITH against DICK and GRAY.

No 184.

WILLIAM DICK and Gray having made a bargain with the Earl Marischall, to pay him a certain duty for a five years rent, of a part of his rent, promised to make Robert Keith portioner of the eighth part of the block. He pursues them upon that promise, and refers the same to their oath. They allege this bargain with the Earl was by writ; and if he had been admitted portioner, he behoved to be bound by writ; so long as the writ is unsubscribed *locus est penitentiæ*.—THE LORDS found the promise might be proved by their oaths.

*Auchinleck, MS. p. 155.*

1629. March 25. RUSSELL against PATERSON.

No 185.

ONE being pursued for payment of L. 99, conform to his promise made to pay the same, it being *contended*, That it was probable by witnesses, as the pursuer desired; the LORDS found it was only probable by the defender's oath, or by writ, and admitted not the same to be proved by witnesses.

*Act. Russell.*

*Alt. Aiton.*

*Clerk, Gibson.*

*Fol. Dic. v. 2. p. 227. Durie, p. 441.*

1636. February 25. L. ERNOCK against L. PRESTON.

No 186.

LAIRD of Ernock pursuing the young Laird of Preston, for payment to him of L. 100 promised to him by Preston; and it being questioned by the defender, that this promise ought to be proved by writ, or the defender's oath, and no otherwise; the LORDS found, that the same might be proved by witnesses, and admitted the same to probation, to be so proved; seeing it was only the promise of L. 100, and not above that sum; for, if it had been above that sum, they would have found it only probable *scripto vel juramento partis*.

Found the reverse of Russell against Paterson, (*supra*).

*Fol. Dic. v. 2. p. 227. Durie, p. 798.*

1636. March 4. LILLIE against LAIRD of INNERLEITH.

No 187.

JANET LILLIE, relict of umquhile James Toures, brother to Laird Innerleith, pursuing him to be decerned to pay to her two bolls of wheat yearly, during her lifetime, which the Laird promised to pay to her yearly in presence of diverse famous witnesses, by whom she offered to prove the said promise, and

The promise to pay an annuity, which it was alleged had been paid for two