

No 51.

defender *alleged*, That if such condition was, the same should not be given to the pursuer's probation, without that he would allege that the condition was inserted in the obligation, which was not of verity; which allegiance of the said Alison was admitted by the Lords, and found that the said condition might not be proved by the witnesses, albeit they be inserted in the obligation foresaid; and therefore ordained the defender's letters to be put to farther execution, notwithstanding the allegiance of the said William.

*Fol. Dic. v. 2. p. 219. Colvil, MS. p. 24E.*

1574. November 16.

DALGATIE *against* URY.

No 52.

Found in conformity with the above. The present case respected some verbal promises said to be made by an arbiter at signing a decree arbitral.

THE Lairds of Dalgatie and Ury being referred to the judgment of the Laird of Park, for setting of certain marches, as arbiter and amicable compositor, and what sentence that ever he gave, both the parties should bide thereat; in which matter, the Laird of Park gave sentence, and set the marches betwixt their lands debateable; upon which sentence, Dalgatie summoned Ury to hear letters thereupon, or else to allege a cause why. Ury alleged, at the day of compareance, that no letters should be given conform to the said sentence, because at making of the compromit foresaid, the arbiter promised to him that he should not give sentence, nor yet set marches, but by the advice of certain friends, who were labourers of the said compromit; and also, if he took any lands in any part from Ury, he should give him as meikle by taking off Dalgatie's lands from him in another place, and to give to Ury. Dalgatie *alleged*, That there was a compromit subscribed by the parties, referring and submitting them to the arbiter foresaid, who had decreted in the said matter, and set marches conform thereto betwixt their lands, which was put in writ, authentically subscribed by the judge foresaid, conform to the said compromit; no promise was contained as was alleged; and therefore no witness contained in the said compromit should be received for proving of the said promise, which might take away the effect of the said compromit and sentence passed thereupon, authentically put in writ, unless he would prove the said conditions by an authentic writing, and not by witnesses; which allegiance of Dalgatie was found relevant by the Lords, and no witnesses to prove Ury's allegiance.

*Fol. Dic. v. 2. p. 219. Colvil, MS. p. 24I.*

No 53.

Whatever can take away a decree, can be no otherwise proved than by writ or oath of party.

1583. May.

COUNTESS OF ARGYLE *against* SHERIFF OF MURRAY.

THE Lady Countess of Argyle having obtained decree against the Sheriff of Murray to flit and remove from certain lands, pursued the said Sheriff for the violent profits, who *answered*, That he could not be decerned in any violent profits, because my Lady was content, and agreed, with the consent of my Lord Argyle, her husband, that notwithstanding the said decret obtained