

No 181.

1580. November 26. AUCHINLECK *against* GORDON.

IN an action betwixt George Auchinleck of B. and the Laird of A. Gordon, it was found, that a promise, for payment of a sum for one to another, could not be proved by witnesses, sed vel per scriptum vel per juramentum partis; licet jus commune et sana ratio contrarium tradere videantur; L. 15. C. De Fide Instrumentarum, &c. et de jure canonico testes et instrumenta æquiparantur; Vide Gloss. in sexto, de censibus et exactionibus.

*Fol. Dic. v. 2. p. 227. Colvil, MS. p. 291.*

No 182.

1615. December 5. TENANTS OF KIRKBLAIN *against* HOG.

IN an action of reduction, pursued by the tenants of Kirkblain against Mr Thomas Hog, Minister, the LORDS found, that a promise to the pursuers, that they should not be prejudged by their not compearance to give their oath, could not be proved by witnesses, but by writ or oath of party.

*Fol. Dic. v. 2. p. 227. Kerse, MS. fol. 189.*

No 183.

Where a promise had been made by a husband and wife, the oath of the wife was allowed to be taken.

1628. January 30. LORD GRAY *against* GRAHAM.

IN an action by the Lord Gray *contra* Mr James Graham and his wife, founded upon a promise made by them to him, which was referred to both their oaths; the LORDS found, that the wife ought to give her oath, albeit her husband *alleged*, That her oath of the law ought not to be taken upon the promise libelled, seeing the pursuer's summons bore the same to be made by her in the time of her marriage with this present husband, and since they were married together, so that she could not depone thereon; for, albeit she should confess the promise, it would neither be obligatory against the husband, if he should deny the making of any promise, neither would it be obligatory against herself, albeit she should survive her husband, the same being made, as the libel confesses, in the time of their marriage standing; notwithstanding whereof, the LORDS found, that she ought to give her oath, and then the Lords would consider what effect the same should produce.

Act. Chaip.

Alt. Russel.

Clerk, Hay.

*Durie, p. 335.*