

No 273.

liver the said instrument : And gif the Notar denyis him to have bene Notar thairto, it may be provin be sufficient witnessis that the samin was takin in his handis : And gif it happinis, in the time of the samin proces of probation dependand aganis him, to cum to the partie's knowledge, that ane uther man was Notar in the said matter, and that instrument was takin in his handis thairupon, the partie makand faith that the samin of new is cum to his knowledge, aucht and sould have the like diligence as is befoir expremitt aganis the second Notar beand on life ; utherwayis, gif he be deid, the partie may call and per-sew for transuming of the prothocal.

*Fol. Dic. v. 2. p. 234. Balfour, (OF PROBATION BE WRIT.) No 29. p. 367.*

No 274.

1584.

A. against B.

IN an action of ejection, it was *excepted* by the defender, That he entered to the lands libelled by virtue of a decret pronounced between him and the pursuer by certain friends, unto whom they had both referred themselves ; and this he offered to prove by the same parties comuners. *Replied*, That the allegiance in effect was founded upon a submission and compromitt, which could only be proved *per scripta*. And so the LORDS found.

*Spottiswood, (PROBATION BY WRIT.) p. 247.*

No 275.

1593. *January 22.*

SEATON against CANT.

IN an action pursued by Captain Seaton against Cant, relict of Cromwell Balfour, it was found, That it could not be proved by witnesses that Wother-spoon, alleged notary to the obligation whereupon the pursuit was founded, was witness *habilis et reputatus*, a famous and legal notary to whom recourse was had, &c. ; but that the same behoved to be proved by three unsuspected instruments at the least to which he was notary, which behoved to be produced.

*Fol. Dic. v. 2. p. 234. Haddington, MS. No 310.*

No 276.

1611. *January 16.*

A. against B.

ALBEIT a man pursuing a notary for extracting and delivering to him of an instrument, alleged concerning the pursuer, and taken in that notary's hand, can have no other probation than the notary's oath and his book ; yet, if an act or instrument be taken in Court, the LORDS inclined to think that it might be proved *per membra curiæ*, as the Judges, remanent clerks, and procurators, who were also famous, and more famous than the clerks.

*Fol. Dic. v. 2. p. 234. Haddington, MS. No 2091.*