

1606. February 8. TENANT against L. TRAQUAIR.

No 130.

MR. JOSEPH TENANT, Minister at Bardrowell, pursued the Lord of Traquair for payment to him of his stipend for two years, extending to 300 merks yearly. It was *alleged*, That he had received a certain quantity of victual, contained in a ticket, given in with the exception, in complete payment of the fore-said hail stipend. The exception was found relevant, of consent of party, and contradicted anent the manner of probation. But the LORDS found, it behoved to be proved by writ or oath of party; because, in effect, it was probation of the payment of 300 merks, which could not be proved by witnesses.

*Fol. Dic. v. 2. p. 225. Haddington, MS. No 1005.*

1609. January 13. HOME against BROWN.

No 131.

MR. WILLIAM HOME of Gradein being pursued by Brown, the relict of umquhile David Brown, merchant, for payment of the sums contained in two obligations made by him to the said umquhile David, and registered before his decess; he *excepted*, That he should be assoilzied, because, being after the date of both obligations, the defunct had written in his own count-book, that Mr William Home rested owing to him L. 39; likeas, he offered him to prove, by witnesses, that he had made payment of the hail sums contained in both the obligations, except the said L. 39. It was *answered*, That witnesses could not prove the payment, in respect of the quantity of the debt founded upon. Registered obligations and the account-book might stand with the obligations proceeding upon other furnishings and debts, and could not take away the obligations; notwithstanding whereof, the LORDS found, that the exception might be proved by the count-book and witnesses.

*Fol. Dic. v. 2. p. 224. Haddington, MS. No 1529.*

1609. November 23. LAIRD of ROMANO against NISBET.

No 132.

THE LAIRD of Romano pursued one Nisbet to hear a tack declared null, upon a clause irritant, for not payment of the duty of the tack for two terms running together. It was *excepted*, That he should be assoilzied for the first two terms, because, he offered to prove real offer thereof, *debito tempore*, by famous witnesses, the duty being only five merks at the term, which the pursuer rejected to receive. THE LORDS repelled the exception, unless he would prove it by writ or oath of party. It was farther *excepted*, That the defender should be assoilzied, because, before the beginning thereof, the

In a declarator of irritancy *ob non solutum canonem*, founded on a clause irritant in a deed, payment of the canon was found not relevant to be