

1632. *March 3.* SHERIFF of the FOREST *against* EARL of ANGUS.

No 264.

IN an action of reduction and declarator of redemption of the lands of Selkirk, pursued by the Sheriff of the Forest, against the Earl of Angus, there was produced by the Sheriff a contract betwixt George, Marquis of Angus, and the Sheriff's predecessors, anent the wadset of said lands, upon production whereof the Earl asked instruments, which were granted by the Lords: The cause being disputed, the Sheriff took up his process, and suffered the Earl to get protestation; and the Earl desired the extract of his instrument, which the Sheriff refused, in respect he had taken up his process. THE LORDS found he needed not give out this instrument.

*Auchinleck, MS. p. 172.*

1633. *January 24.* M'CONNALD *against* LAIRD of MAINE'S MILL.

No 265.

AGNES M'CONNALD pursues the improbation of a bond made for astringing her lands to the Laird of Maine's Mill, which mill pertained before to Monro of Newton. After the whole diets of the ordinary and direct manner of improbation had run out, and rested to proceed in the indirect manner, the pursuer of the improbation of the said bond desires that she might be heard to propone a peremptory defence that will take away the said bond, viz. that the same is discharged by the party to whom it is granted, which defence or exception she should verify *instante*, by production of the said discharge, and the proponer of the exception would give his oath that the discharge was lately come to his hands; which discharge being read *in presentia Dominorum*, seeing the discharge was not clear enough to take away the bond, but ambiguous, and the proponer of the exception was not present at the bar, nor in the town to give his oath, that the discharge was lately come into his knowledge, the LORDS would not receive the said exception, in respect of the state of the process, but ordained the pursuer to go on with his incident improbation.

*Auchinleck, MS. p. 173.*

1635. *February 5.* KER *against* FORSYTH.

No 266.

A PARTY having first offered to improve a writ, and then *alleging*, That he had also a nullity to propone against it, which he craved might be reserved to him *per expressum*, in case he should fail in the improbation; the LORDS refused to reserve it to him, but allowed him to pass from his improbation, if he pleased, and take him to his nullity, because there was no term yet assigned to him to