

## OATH OF PARTY.

## SECT. I.

## In what Cases admitted.

1609. *March 3.*ELPHINSTON *against* ELPHINSTON.

No 1.

**A**N arbiter forced to give his oath, upon a promise made, not to decern in prejudice of one of the submitters.

*Fol. Dic. v. 2. p. 13. Kerse, MS. fol. 181.*

1624. *February 25.*JOHN DUFF *against* KEITH and BOYD.

No 2.

JOHN DUFF, donatar to Andrew Kelly's escheat, pursued a declarator thereof. Compeared one Keith, and Stephen Boyd, two of Kelly's creditors; and *alleged*, No declarator; because they offered to prove, that thr gift was taken to the behoof of the rebel. Boyd having recovered an incident for proving of his exception, Keith not being so wary in time was forced to refer his to the pursuer's oath of verity; who *alleged*, He could not give his oath; because the other had an incident running for proving of the same, wherethrough he might be brought in danger of perjury.—THE LORDS thought the probation might divide, the parties being diverse, though they were about to prove one and the self-same thing; and, therefore, ordained his oath to be taken.

*Fol. Dic. v. 2. p. 13. Spottiswood, (PROBATION.) p. 241.*