

1619. *February 17.* LO. HUNTLY *against* LO. FORBES.

No 277.

FOUND that it was probable by witnesses, that such a notary was Sheriff-clerk and in use to give sasines as Sheriff-clerk.

*Fol. Dic. v. 2. p. 234. Kerse, MS fol. 77.*

\*\*\* A similar case is reported by Kerse, 15th July 1615, Douglas against Cheeslie, No 4. p 3092. *voce* CONSUETUDE.

1627. *July 21.* ANGUS MACKRANNEL *against* MACKENZIE of Coul.

No 278.

IN an action between Angus Mackrannel and Mackenzie of Coul, a matter being admitted to the pursuer's probation, and he having produced witnesses for that effect; the defender *alleged*, That witnesses could not be received in the cause, because he would refer the matter to the pursuer's own oath. The pursuer *answered*, He could not be hindered of that lawful probation, which he had made choice of; yet the LORDS found he should clear it by his oath.

*Spottiswood, (PROBATION.) p. 242.*

1627. *November 16.* KIRKWOOD *against* INGLIS.

No 279.

If a summons be referred to be proved by writ or oath of party, the pursuer must condescend at the first term of probation which of the two ways he will choose.

*Auchinleck, MS. p. 152.*

1628. *March 12.* Lady DUNFERMLINE *against* The Earl Her SON.

No 280.

If there be more exceptions than one admitted to the defender's probation, he must take a time to them all by law, yet with consent of the party two diverse times were granted by the Lords for proving two several exceptions.

*Auchinleck, MS. p. 152.*

\*\*\* Durie's report of this case is No 2. p. 3048. *voce* CONQUEST.

1628. *March 22.* GEORGE KER *against* The TOWN of JEDBURGH.

No 281.

IN an action pursued by George Ker against the Town of Jedburgh, there being an exception admitted to the defender's probation, they raised an action