

No 254. proved by witnesses, tending in effect both to prove payment to Barnbarroch, of 2000 merks, and to make him debtor for 1200 merks.

Clerk, Hay.

Durie, p. 215.

1628. February 23. KELLO against MACKISON.

No 255.

A MESSENGER being pursued for the debt owing by a party whom he had taken, and, instead of prison, put him in a private house, from whence he made his escape; the libel was found relevant, and that the employment and fact might be proved *prout de jure*.

Fol. Dic. v. 2. p. 234. Durie.

* * * This case is No 2. p. 8887. *voce* MESSENGER.

No 256.

1628. November 28. BORTHWICK against CLERK.

A PARTY having denounced, in order to comprise, and the debtor suspending, and before the suspension was discussed, another creditor having comprised and been infest; the LORDS sustained the objection of collusion, relevant against the appriser infest, that he had procured the suspension by his own labour and expenses; but this was sustained to be proved only by writ or oath of party.

Fol. Dic. v. 2. p. 233. Durie.

* * * This case is No-3. p. 2427. *voce* COLLUSION.

No 257.

1629. March 6. DUKE of LENNOX against HIS CHAMBERLAINS.

IN the action pursued by the Duke of Lennox against his Chamberlains, an exception being proponed, that they were stopped by the pursuer's own servants in the execution of a poinding; it was found that it should not be proved by witnesses, but by the officer's executions, bearing the hindrance made.

Fol. Dic. v. 2. p. 234. Spottiswood, (PROBATION.) p. 243.

No 258.

What proof admitted of knowledge, that a person dealt with was bankrupt?

1630. February 23. RITCHIE against PATERSON.

WILLIAM PATERSON being cautioner, acted in the books of Burrows for Hector Paterson, who was admitted a Flemish factor for Scots merchants, after sentence obtained before the Lords, by John Ritchie, merchant burges of Edin-