

juramentum;' but in this case the exception was sustained, 'for not admitting of the reason upon the writs newly come to knowledge, seeing it was much questioned and doubted, if the same being proponed before sentence, would have been relevant or not. And if the same might have been now received, the writs should have been more clear to have produced the pursuer's intention than these were, so that here they were not admitted. Vide L. Unicam Tit. 9. Lib. 10. Cod. De sententiis adversus fiscum latis retractandis, quæ lex dicit has sententias intra triennium retractari posse, et post id tempus ex prævaricatione et fraude, sed hoc in fisco.

Act. Nicolson & Gilmora.

Alt. Stuart & Neilson.

Clerk, Gibson.

Fel. Dic. v. 2. p. 200. Durie, p. 556.

1631. July 22.

SIR ARCHIBALD ACHESON *against* JOHN MURRAY of Broughton.

SIR ARCHIBALD ACHESON pursued John Murray of Broughton for a debt as heir to his father. Litiscontestation being made in absence of parties, at the first term the pursuer produced some writs to verify the defender to be heir to his father, and, among others, an indenture between the Earl of Annandale and the defender, which was subscribed only by the Earl of Annandale, for supplying whereof he summoned the defender to give his oath that the counterpawn of the said indenture, subscribed by him, (after the English manner) was in the Earl's hands. The defender compearing, *alleged*, That by the act of litiscontestation, the pursuer having taken him to one manner of probation, he could not now crave the defender's oath upon the same that he had produced writ for, which were to make two litiscontestations. *Replied*, He craved the defender's oath only in supplement of the probation by writ produced, which was lawful and usual to both; as when a party produceth for verifying any allegiance a bond not subscribed by witnesses, but only by the party, and refers to the grantèr's oath that it is holograph, and subscribed by him. Also was *alleged* a practise not long before, between Mr James Reid and Mr John Sharp, wherein Mr John having produced, for proving an allegiance, an account book of his brother's, Sir William Sharp, withal he produced witnesses for proving that the account book was Sir William's own hand writ, which being excepted against Mr James Reid, by interlocutor the LORDS sustained that the witnesses should be examined upon it. THE LORDS found that he ought to give his oath upon that which was required.

Fel. Dic. v. 2. p. 201. Spottiswood, (LITISCONTESTATION.) p. 198.

No 262.

No 263.

Altho' the mode of probation had been fixed by the act of litiscontestation to be *scripto*, the defender was ordained to give his oath in supplement of the probation.