

No 640.

suspected, according thereto the Lords would decern : And it was found, that the pursuer might lawfully use the Laird of Blauns to be witness for him, albeit he had sold the lands controverted to the pursuer, and was subject in warrandice thereof, seeing the same was sold under reversion, to which reversion he had made the defender and his authors assignees.

Act. Nicolson:

Alt. Stuart..

Clerk, Gibson.

*Durie, p. 561.*

1631. July 22.

AITCHISON against MURRAY.

No 641.

Effect where the counter part of an indenture, respecting lands, was in the opponent's hands.

IN an action pursued by Sir Archibald Aitchison against John Murray of Broughton, as heir, at least behaving himself, to his umquhile father, George, viz. by selling certain lands which pertained to his father in Ireland, to the Earl of Annandale, litiscontestation is made in the cause. The defender being absent *in termino probatorio*, Sir Archibald produces, by other writs, an indenture subscribed by the Earl, anent the said lands, annailzied to him by the defender, and because the other half of the indenture, subscribed by the defender, was in the Earl's hands, for shortening process, in raising incidents, Sir Archibald referred to the defender's oath of verity, that his indenture, produced, was the true double of that part which was subscribed ; but the defender referred it to his oath ; after which production, compeared his Advocate, Sir Thomas Hope, and *alleged*, The defender could not, by any form of process, be compelled to give his oath, seeing the pursuer had referred nothing to his oath by the libel, and seeing he had produced writs to prove his libel, he would not use probation of that same member by oath of party also. To which it was *answered*, That the pursuer used his oath in supplement of the objection, which might be made against the inventory produced, viz. that it would not prove, because it was not subscribed by the defender ; and if this had been objected, the pursuer might have replied, that he referred the verity of the deed to the defender's oath ; so it might be sustained *hoc loco* ; which the LORDS sustained.

*Auchinleck, MS. p. 158.*

1663. January 24.

SYDSERF of Ruchlaw against WOOD.

No 642.

In a case of contravention of marches, where proof had been taken, a new proof, before answer, was ordered.

THERE being mutual contraventions betwixt Ruchlaw and Wood, both relating to a piece of ground, upon the marches of their lands, which Ruchlaw alleged to be his property, and that Wood had contravened by needful pasturage thereon, himself being present, when he was desired to remove his goods off the same ; and the other alleging commonty, and that Ruchlaw had contravened, by wilful debarring him from his commonty ;