

1661. *December 4.* WHITE *against* PATRICK CROCKAT.

WHITE, a Fletcher in Falkland, convenes Patrick Crockat in Alyth, libelling That he coming to his house to lodge with some other drivers, he had in his custody 600 merks, which he shewed and intimated to Patrick; who bound and obliged him by word to secure him while he was in his house, and promised to go betwixt him and all hazard. He libelled it was taken from him that night out under his bed by the said Patrick; at least he was seen often to come into the chamber in the night: and so, by the law, concluding restitution. The defender denied the libel. The question was anent the manner of probation.

It was found in the Inner-House that that part of the libel bearing the pursuer to have had money with him in a bag when he came to that house, [was] probable by witnesses; which if he proved, they would allow him *juramentum in litem* anent the quantity. For the other part anent the promise, they found it only probable *scripto vel juramento*, together with the intimation.

*Act.* Maxwell. *Alt.* Dinmuire. Jo. Hay, C.

*MS. folio 51.*

1661. *December 6.* ALLANE *against* MUIRE and GIBSONE.

MUIRE being addebted to ——— in L1000, a creditor of his, knowing that one Allane was owing to Muire 50 merks for the price of a horse, arrests that sum in his hand, and gets a sentence against him to make it furthcoming: Allane having past his promise to one Gibson, another creditor of Muire, before the arrestment; who recovers sentence against him upon his confession. They both contending for the sum, he to whom the promise was given before the arrestment was preferred to the arrester, and the debtor found only liable in single payment of the sum.

*Act.* Heriot. *Alt.* Eleis. Jo. Hay, C.

*MS. folio 51.*

1661. *December 20.* DIRUR (DEWAR) *against* The Countess of MURRAY.

THE Countess of Murray having set a tack to Ja. Dirur (Dewar) for payment of 1200 merks, with a clause irritant, that in case it should happen two terms to run in the third unpaid, that then she should eject and remove him, and meddle with his corns and cattle, without any hazard of spulyie or ejection; and that *brevi manu*, without a declarator. The Countess having ejected him and meddled with his goods, she is convened for spulyie and ejection, having neither pointed his goods nor got declarator on the clause irritant. ALLEGED, *Quilibet potest renunciare juri pro se introducto; et prout unumquodque contrahitur, sic etiam dissolvitur.* That he had renounced the benefit of a declarator in the tack, and in the mutual