No 51. defender *alleged*, That if such condition was, the same should not be given to the pursuer's probation, without that he would allege that the condition was inserted in the obligation, which was not of verity; which allegeance of the said Alison was admitted by the Lords, and found that the said condition might not be proved by the witnesses, albeit they be inserted in the obligation foresaid; and therefore ordained the defender's letters to be put to farther execution, notwithstanding the allegeance of the said William.

*Fol. Dic. v. 2. p. 219. Colvil, MS. p. 241.*

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1574. *November* 16. Dalgatie *against* Ury.

No 52.
Found in conformity with the above. The present case respected some verbal promises said to be made by an arbiter at signing a decree arbitral.

The Lairds of Dalgatie and Ury being referred to the judgment of the Laird of Park, for setting of certain marches, as arbiter and amicable compositor, and what sentence that ever he gave, both the parties should bide thereat; in which matter, the Laird of Park gave sentence, and set the marches betwixt their lands debateable; upon which sentence, Dalgatie summoned Ury to hear letters thereupon, or else to allege a cause why. Ury alleged, at the day of compearance, that no letters should be given conform to the said sentence, because at making of the compromit foresaid, the arbiter promised to him that he should not give sentence, nor yet set marches, but by the advice of certain friends, who were labourers of the said compromit; and also, if he took any lands in any part from Ury, he should give him as meikle by taking off Dalgatie's lands from him in another place, and to give to Ury. Dalgatie *alleged*, That there was a compromit subscribed by the parties, referring and submitting them to the arbiter foresaid, who had decreted in the said matter, and set marches conform thereto betwixt their lands, which was put in writ, authenticly subscribed by the judge foresaid, conform to the said compromit; no promise was contained as was alleged; and therefore no witness contained in the said compromit should be received for proving of the said promise, which might take away the effect of the said compromit and sentence passed thereupon, authenticly put in writ, unless he would prove the said conditions by an authentic writing, and not by witnesses; which allegeance of Dalgatie was found relevant by the Lords, and no witnesses to prove Ury's allegeance.

*Fol. Dic. v. 2. p. 219. Colvil, MS. p. 241.*

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No 53.
Whatever can take away a decree, can be no otherwise proved than by writ or oath of party.

1583. *May.* Countess of Argyle *against* Sheriff of Murray.

The Lady Countess of Argyle having obtained decree against the Sheriff of Murray to flit and remove from certain lands, pursued the said Sheriff for the violent profits, who *answered*, That he could not be decerned in any violent profits, because my Lady was content, and agreed, with the consent of my Lord Argyle, her husband, that notwithstanding the said decreet obtained

by my Lady, the Sheriff should sit still in the room, in hope of an exambion of other lands which my Lady was to make with the said Sheriff. This being found relevant and admitted, it was *alleged* by my Lady's advocate, That the same could in no manner of way be proved but per scripta aut juramentum partis. It was *alleged* upon the other part, That that thing which would take away a decreet, whether it was for one year or more years, could not be proved but by writ aut juramentum partis; which was so found by the Lords, and the matter referred simpliciter to the oath of my Lady. No 53.

*Fol. Dic. v. 2. p. 219. Colvil, MS. p. 362.*

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1605. *July* 23. Laird of SCHAW *against* PALMER. No 54.

IN an action betwixt the Laird of Schaw and Palmer, it was *excepted*, That Palmer should not remove, because he had a tack of the said lands for terms to come. He was urged to condescend when the tack was set, and for what duty, because the pursuer would offer him to prove that the defender had paid to him a greater duty, and so had in effect renounced his tack. It was *answered*, That he could not take away his tack by probation of witnesses. THE LORDS found that they would not receive that allegeance of paying of greater duty to prejudge the tack, unless it were proved by writ or oath of party.

*Fol. Dic. v. 2. p. 220. Haddington, MS. No 939.*

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1610. *February* 8. WINRAHAME *against* CROMBIE. No 55.

AN obligation of an hundred merks found, by interlocutor, to be innovated by an act in the books of Leith, whereby the debtor warded, acted himself to pay L. 90, albeit the act had no relation to the obligation and debt therein contained; and it was admitted to be proved by witnesses, to wit, the Bailie and Clerk of Leith, that the act was made for payment of the sum of the obligation.

*Fol. Dic. v. 2. p. 220. Haddington, MS. No 1795.*

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1611. *January.* KER *against* HOME. No 56.

IN an action pursued by William Ker of Middlemistwalls *contra* John Home of Slaigdane, the LORDS found that an assignation of a mutual contract, *ad hunc finem*, whilk the liferenter had subscribed the contract, relevant to be proved by witnesses inserted; and if the same were proved, found that either the said John