

S E C T. IX.

Naked Promise.

1551. February 15.

DRUMMOND against BISSET.

IN the action pursued by Robert Drummond of Carnock against David Bisset, the said David obtained a decret of spuilzie upon the said Robert, for spuilzieing from him of certain evidents, and of a charter and sasine, made to his son and apparent heir, putting him in fee of lands, but the sasine not taken; and obtained letters upon the said decret in all the four forms. The said Robert called the said David before the Lords, and produced the said letters and evidents, contained in the said decret; and, for that cause, desired the letters of four forms to be *simpliciter* suspended. It was *answered* by the said David, That the letters should not be suspended; because the said decret bore, that the said evidents should be delivered as good as they were the time of the spoliation; and also, he said they were not so good; because, the time of the spoliation, the said precept of sasine was not used, and no sasine followed thereupon; and, after the spoliation, the said Robert seduced and circumvened the said David's son, to whom the said precept was made, and made him take sasine by his father's advice, and thereafter annailzied the said lands to the said Robert; and, therefore, the said evidents were not so good as they were, by reason of the great inconvenient that followed thereupon; and also, because the said David put his son in fee of his lands, by reason of a contract of marriage, and should have had, by promise, great sums of money for the same; and by reason, that his son got sasine by virtue of the said evidents, the father tint his tocher good; and so the evidents were not so good as at the time of the spoliation: Which allegiance the Lords thought relevant, and assigned to him the 6th February to prove the same; so, after for the said Robert it was *alleged*, That a contract of marriage should be proved by writ, and not by witnesses, the proof of the tocher good by witnesses was admitted, and witnesses received.

Fol. Dic. v. 2. p. 227. Maitland, MS. p. 108.

* * * Balfour reports this case:

PROMISE of tocher-gude may be provin be witnessis, and it is not necessar to prove the samin be ane contract of mariage.

Balfour, (OF PROBATION BE WITNESSIS.) No 28. p. 376.

No 180.
Although a contract of marriage cannot be otherwise proved than *scripto*, yet a promise of tocher may be instructed by witnessis.