

No 132.
proved by
witnesses, al-
though the
duty was
small.

pursuer ejected him violently furth of the said room, and possessed the same himself; and so could not crave him for the duty thereof. THE LORDS repelled the exception, and would not receive the said allegiance by way of exception; but prejudice of the pursuer's action of ejection; and found that they would only annul the tack *a tempore motæ litis*.

Fol. Dic. v. 2. p. 224. Haddington, MS. No 1651.

No 133.

1610. March 9.

LOWRIE against HAY.

In a pursuit for 500 merks, in a registered bond transferred, an exception of payment of eight score of pounds, by delivery of a ton of wine of that price, found relevant to be proved by famous witnesses named in judgment, the payment being made before the term of payment of the obligation, and it being done before the act, that witnesses should not prove above an hundred pounds.

A contract of marriage being generally discharged by an ample acquittance, because the tocher conditioned well paid, or employed upon land, as was conditioned, there was action thereafter sustained upon the said contract, to compel the executors of the party discharged to pay, which being bestowed upon land, was uplifted after the discharge.

Fol. Dic. v. 2. p. 225. Haddington, MS. No 1857.

No 134.

Performance
of a written
obligation, by
payment or
delivery of
victual, or
other fungi-
bles, in terms
thereof, prob-
able by wit-
nesses.

1620. January 13.

LITTLE against HILSTONES.

THOMAS DUNCAN suspends his registered bond, made to David Little and his umquhile spouse, of 220 merks, for the price of 20 bolles of bear bought from them, against the said David, and against Hilstones' executors, to David and umquhile spouse, upon these reasons, David was bound in the bond or contract, he and his spouse, to have delivered the bear, which he never did, and is under present horning for it. *Answered, Offers to prove the victual delivered. Admits the allegiance, and ordains letters for summoning of witnesses, and producing of writs, and other probation, and assigns a day. Second reason, The half of the sum is not due to David, who is not executor to his wife, but to Hilstones', (who compeared not.) THE LORDS declare, if David proves the delivery, they will find the letters orderly proceeded for David, he finding caution to warrant the suspender at the wife's executors' hands.*

Clerk, Durie.

Fol. Dic. v. 2. p. 224. Nicolson, MS. No 540. p. 373.