

No 614. any other person's right to the same, if they did not pertain to her, wherein he was not prejudged by this interlocutor, if he pleased to propone the same. But J. C. *Dominium non potest probari per testes quia, Incorporalia non cadunt sub sensibus.* Vid. Bartol. Tract. De Testibus.

Act. Mowat.

Alt. Cunningham.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 270. Darie, p. 246.***No 615.**

The cause of being put in possession of moveables may be proved *prout de jure.*

1628. December 10. CRANSTON against ADAMSON.

PATRICK CRANSTON, assignee constituted by Catharine Pringle, pursues Adamson, who had married the said Catharine's daughter, for delivery of certain goods and gear alleged pertaining to the said Catherine, and wrongously introduced with by her said son-in-law, extending to the avail of 2000 merks. To which it was *answered*, That by a verbal contract of marriage, which afterward was accomplished betwixt the said pursuer's daughter and the defender, she permitted to him the whole goods and gear upon the ground, and put him in possession of her room, he giving to her sustentation in the house with him and her daughter; likeas, he occupied the room, and paid the master the duty therefor, as tenant, for the space of five years preceding the intending of the cause. To this it was *replied*, That this exception could not be proved but *scripto vel juramento partis*. THE LORDS found, That it might be proved *prout de jure.*

Auchinleck, MS. p. 154.

1629. July 29.

A. against B.

No 616.

EXECUTORS being pursued for spoliation of teinds committed by the defunct, and the libel referred to the defender's oath, the LORDS found, that the executors could not be held to give their oaths *super facto alieno*.

Auchinleck, MS. p. 151.

1629. November 27. PATERSON against EDWARD.

No 617.

Proof of the property of moveables allowed *prout de jure.*

THOMAS PATERSON pursued Nicol Edward for making certain goods and sums of money forthcoming to him, which he had arrested in his hands, as pertaining to John Mackcubie his debtor. The defender *contended*, That the pertaining of the goods libelled to John Mackcubie could not be proved but *scripto vel juramento partis*, especially considering, that the said John Mackcubie

had made assignation of the same goods before the defender, in which case he was content to make litiscontestation, THE LORDS sustained the libel to be proved *prout de jure*, as had been done before in the like action between Sir Jerome Lindsay and the Laird Caprington, No 614. p. 12723, wherein was found, that Sir Jerome might prove that certain silver work did appertain to the old Lady Caprington by witnesses, although the Laird did allege a special disposition of the same silver work to himself by the Lady.

No 617.

Spottiswood, (PROBATION.) p. 243.

* * Durie's report of this case is No 16. p. 4885, *voce* FRAUD.

1629. December 1. YOUNG against SIMPSON.

No 618.

JAMES YOUNG in Fisherrow, by his bond, given to Adam Simpson in Fraserburgh, is obliged to deliver to the said Adam, six barrels of salt, at a certain day and a certain place in Shetland, and failing thereof, ten merks for each barrel. Simpson alleging the failzie, registers the bond, and charges for the failzie. Young suspends, *alleging* he made offer to the pursuer *debito tempore et loco*; and upon the pursuer's refusal, left the six barrels of salt in the place of Shetland contained in the bond, which reason he offered to prve by famous witnesses. The pursuer opponed his bond, which could not be taken away by witnesses. THE LORDS found, That a matter of so small importance consisting *in facto*, viz. the delivery of the six barrels of salt, and offer thereof made to the party, might be proved by witnesses.

Auchinleck, MS. p. 156.

1630. July 24. ——— against FORREST.

No 619.

FURNISHING of bread or ale, or such like, being pursued for against the executors or intromitters with the defunct's goods and gear, if the pursuer prove the furnishing, the LORDS oft-times, of their consideration, refer the quantity to the pursuer's oath.

Auchinleck, MS. p. 158.

1631. July 27. GLENDINNING against LAIRD of EARLSTON.

No 620.

CATHARINE GLENDINNING pursues the Laird of Earlston for wrongous intromission with sheep *in anno* 1604. It was *alleged*, That she had no right to the whole sheep libelled, but to the half, because she had a husband living the