by witnesses, which the LORDS found ought only to be proved by writ or oath of party; seeing they found, that the setter of the feu having provided himself of that clause by the charter, the receiver ought to have looked to the manner of security which he acquired, which could not be maintained to the defender, nor subverted to the pursuer, but by the pursuer's own deed, which could not be made known but by his writ or oath. No 144.

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 224. Durie, p. 562.

1631. *June* 28.

The EXECUTORS of ROBERT FERGUSON *against* Mr COLIN CAMPBELL. No 145.

THE delivery of victual is always sustained to be proved by witnesses, although the party be obliged by bond for the delivery thereof. But payment of sums extending to L. 100 or above, no otherwise but by writ or oath of party.

Fol. Dic. v. 2. p. 224. Spottiswood, (PROBATION.) *p. 240.*

*** Auchinleck reports this case:

THE deliverance of victual may be proved by witnesses, although the pursuer have writ obliging the defender for payment of the victual.

Auchinleck, MS. p. 158.

1632. *December* 11. PORTEOUS *against* Lo. HERRIES. No 146.

THE Lo. Herries being pursued for 500 merks addebted by his father, conform to his bond, as heir to him, who offering to prove that the pursuer had received yearly as much victual as in price would extend to this sum, which he offered to prove by witnesses; the LORDS found it not probable by witnesses, but only by writ or oath of party, to take away a debt constituted by bond in writ.

Act. ——. Alt. *Nicolson.* Clerk, *Gibson.*

Fol. Dic. v. 2. p. 225. Durie, p. 657.

1633. *July* 23. La. ABERZELDIE *against* Her SON. No 147.

Found in conformity with No 134. p. 12356.

THE Lady Aberzeldie charging her Son for payment of three chalders of victual addebted to her, conform to a contract betwixt them thereanent, and also