

No. 151. "The Lords found a woman-witness not habile to prove the set of a tenement within burgh."

*Dalrymple, No. 153. p. 212.*

1715. December 13.

MUIRHEAD *against* REID.

No. 152.

Women received as witnesses to prove an account of necessaries furnished out of a shop.

Mr. James Muirhead and his spouse, pursues Isobel Reid and her husband, for an account of brandy and other necessaries furnished out of the pursuer's shop, which was offered to be proved by women witnesses, who, the defender alleged, were not habile by the statute of King Robert I. and constant practice, conform to which the opinions of my Lord Stair, my Lords Dirleton, Sir James Stewart, and all other lawyers agree; and so it was expressly found, 21st July 1675, Wilkie *against* Morison, No. 76. p. 16975. though the point to be proved was a domestic affair, viz. the lending of a bed by the mother to the daughter-in-law living under the same roof.

It was answered for the pursuer: The rule is acknowledged, which is founded both on law, on the opinion of all the authors cited, and all other lawyers; but that rule hath many exceptions, especially where the point to be proved is such as falls most properly under the cognition of women, as a woman's bringing forth a living child, or where *ex natura negotii* there is *penuria testium*, and where the few witnesses that can be had are only women-witnesses, which is the present case; for here the particulars libelled were furnished out of a shop kept by the pursuer's wife, in which there were no men apprentices, nor other men adhibited to any business in the shop, but only the woman in the house where the shop was kept; and such persons as dealt with the pursuer's wife, seeing no man present, and buying in the ordinary way, without ready money, must be understood to submit to such a manner of probation as possibly could be had. And, as to the decision, it is single; and since that time women have been generally received, where there was no place for choice of witnesses.

"The Lords repelled the objection against the women witnesses."

*Dalrymple, No. 154. p. 214.*

1716. November 21.

No. 153. DUNBAR of Thundertown, and Others, *against* INNES of Dunkintie.

In a process of improbation of a disposition granted by Innes of Durkland to the defender Innes of Dunkintie his nephew; the paper, being signed by four witnesses, whereof two were dead and two alive; and the pursuers, upon several alleged circumstances in fact, having craved to be allowed to insist in the indirect