

*** Spottiswood reports this case :

No 221. THE Children of umquhile Robert Dawling pursued my Lord Balmerinoch for 400 merks of house-mail set to him by their father. THE LORDS found, that the quantity of the mail alleged extending to 400 merks yearly, could only be proved by writ (as former discharges) or oath of party.
Spottiswood, (PROBATION.) p. 241.

1628. March 5.

DEACON of the HAMMERMEN in GLASGOW against CRAWFORD.

No 222. THE Deacon of the Hammermen in Glasgow pursued Crawford in Fordanhill, as heir to his father, for the sum of L. 100 borrowed by his umquhile father from the said Deacon upon his bond ; which bond being lost, the pursuer craved to prove the tenor thereof ; which summons the Lords would not sustain to prove the tenor, but to pursue for the sum. The defender *alleged*, That this sum could not be proved but by writ or oath of party, conform to the daily practice and statute of the Lords, which being read, bore a sum exceeding L. 100, not to be proved by witnesses or subscription of one notary, and so decerned the said sum may be proved now and in all time coming by witnesses.
Fol. Dic. v. 2. p. 230. Auchinleck, MS. p. 153.

*** Durie's report of this case is No 130. p. 2247, *voce* CITATION.

1628. November 26.

STIRLING against M'PHADRICK.

No 223. IN a pursuit Stirling against M'Phadrack, for delivery of four mares, with four foals yearly, by the space of three years, or the prices thereof libelled, conform to a paction made betwixt the parties for that effect, when the mares were delivered, and put by the pursuer to the defender in grazing ; this was sustained to be proved by witnesses, and it was not found necessary that the pursuer could be compelled to refer the summons or paction therein contained to the party's oath, albeit the action was not pursued till three or four years were past after the alleged time of the paction and delivery of the mares.

Act. *Nicolson.*

Alt. ———.

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 230. Durie, p. 401.

*** Auchinleck reports this case :

JAMES STIRLING agreed with John M'Phadrack to graze him four mares for payment of a certain grass-mail, and pursues him, conform to the said agreement, to make restitution of the said mares and foals by the space of three

years. The defender *alleges*, This summons could not be proved but by writ or oath of party. THE LORDS found, that it might be proved *prout de jure*, because such probations for the grazing of goods were not usually made by writ, and so may be proved by witnesses.

No 223

Auchinleck, MS. p. 154.

* * * This case is also reported by Spottiswood :

By paction and agreement made between James Stirling and John M'Phadrick, 1625, the said John was obliged to graze four mares to the pursuer James for four merks yearly, and to make their offspring forthcoming to him yearly. Upon this paction James convened him for re-delivery to him of the said four mares and their foals for the space of three years. It being *alleged* by the defender, That the libel being founded upon a paction, could only be proved *scripto vel juramento*; the LORDS notwithstanding sustained it to be proved *prout de jure*.

Spottiswood, (PROBATION.) p. 243.

1629. *January 16.* ALLISON *against* FULLARTON.

AN account consisting of sundry articles, whereof none of them exceeds L. 100, although the account of the whole sum extended to a far greater sum, may be proved by witnesses.

Fol. Dic. v. 2. p. 230. Auchinleck, MS. p. 155.

1632. *November 24.* TURNER *against* KER.

No 224

ONE Turner, taylor in Edinburgh, pursuing one Margaret Ker for payment of the price of sundry gowns and habuilziements taken off by him, and furnished by him to her and delivered, and which was libelled to have been done by him at her direction; the LORDS found this summons, concerning that direction and furnishing, should be proved by writ or oath of the defender, and found it not probable by witnesses, the price libelled extending to L. 400.

Act. Rigg.

Alt. Mowat.

Clerk, Hay.

No 225

Fol. Dic. v. 2. p. 230. Durie, p. 652.

1662. *February.* LD. LIVINGSTON *against* FEUARS of FALHOUSE.

No 226

DIFFERENCES about marches may be submitted and determined verbally, and both submission and sentence may be proved *prout de jure*.

Fol. Dic. v. 2. p. 230. Gilmour.

* * * This case is No 48. p. 2200, *voce* CITATION.