

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