

bable by witnesses, as the having of the same, or the having of the writs in other such cases are probable by witnesses. No 168.

*Huy, Clerk.*

*Fol: Dic. v. 2. p. 226. Durie, p. 426.*

\* \* \* Spottiswood reports this case:

ROBERT FARQUHAR pursued Robert Wallace for exhibition and delivery to him of a bond made to the pursuer, and which the pursuer put in the defender's hands, to be made forthcoming to the pursuer, whensoever he should crave it. The question was about the probation, that it was put in the defender's hands by the pursuer, which the defender alleged could only be proved *scripta vel juramento parvis*: The pursuer contended it might be proved by witnesses, even as the having of an evident is ordinarily proved by witnesses. THE LORDS sustained it to be proved *prout de jure*.

*Spottiswood, (EXHIBITION.) p. 124.*

1678. July 27.

BROWN against GORDON.

In the action Brown against Gordon, it being controverted, in a pursuit for exhibition of a writ belonging to the pursuer, which the pursuer libelled was delivered to the defender by a third party, whether the said delivery was probable *prout de jure*, or only *scripto et juramento*? This being taken to interlocutor by Newton, the Lords found it probable by witnesses; 13th December 1626, E. of Rothes, No 22. p. 12273, where the contrary was found.

*Fountainhall.*

1799. January 19. JOHN CADELL against ROBERT PAUL.

In an action of damages brought by John Cadell against John Morthland and John Johnstone, on account of an alleged libel against him, which, in September 1797, had appeared in a newspaper called the Scots Chronicle, of which Johnstone was the printer, and with which Mr Morthland was averred to be responsibly connected, a proof was allowed, partly in order to ascertain the nature of this connection.

According to the deposition of one of the witnesses, Mr Morthland occasionally wrote entries in the books, which, with other material points, it was expected would appear from inspection of them.

They were in possession of Robert Paul, who, on his examination as a witness, was required by the pursuer to produce them, or allow them to be in-

No 169.

No 170.

In an action of damages, on account of an alleged libel published in a newspaper, with which the defender was said to be responsibly connected, the pursuer, with a view to establish this connection, craved a production of...