

1687. January 16. BRAIDFOOT *against* ELPHINSTON.

No 26.

JAMES BRAIDFOOT, merchant in Edinburgh, pursues Elphinston of Airth's heir, and his tutors, for payment of an account furnished to his father; and being within three years, he proved the delivery by his prentices; but the price and part of the goods not being fully proved, the LORDS ordained him in supplement to give his oath on the truth of the furnishing and prices.

*Fol. Dic. v. 2. p. 11. Fountainhall, v. 1. p. 440.*

1695. December 28.

ALEXANDER THOMSON, Sadler in Edinburgh *against* CARNEGIE of Kinfauns.

No 27.

IN the concluded cause, Alexander Thomson, Sadler in Edinburgh, against Carnegie of Kinfauns, for payment of an account of horse-graith, furnished by the said pursuer to the defender's father, upon the passive titles; all that the witnesses adduced proved was, that they knew the defunct bought saddles and other furniture from the pursuer, and that he was his ordinary who furnished him in all such things, but could not be particular neither as to the quantities nor value; whereupon it was *urged* for the pursuer, That his oath might be taken in supplement of this defective probation; which the LORDS refused, in regard the *juramentum suppletorium* is only permitted in law, where there is a *semiplena probatio* of the libel by one witness, or other pregnant circumstances, as where their apprentices or other witnesses condescend on the particular species of goods, mentioned in his compt-book, and that they saw them furnished, or carried them. But here there was scarce any thing proven at all, in which case, to take the pursuer's oath, were to prove his libel by his own oath; and though this may be very prejudicial to tradesmen, yet the contrary might lay a foundation to constitute great debts against the lieges, (who might have paid all at the off-taking of the goods,) if their oaths were in all cases taken in supplement. And though the LORDS lately did it in Mrs Pourie's action against Thomas Robertson's Heirs, for an Apothecary's account, within these four years; yet, in that case, there were medicaments furnished to one *in lecto*, (which pleads some privilege,) and the witnesses were special as to some particulars, which did not occur in this case. It fell also to be debated here, if the date of the last article, being within three years of the pursuit, stopped the prescription of the whole, especially where there was a long interval of time between the last article and the preceding, which might be industriously objected. Sir John Nisbet used to argue against that currency of accounts for stopping prescriptions. But the LORDS commonly sustain it; however it was not here decided at this time.

Where witnesses only swore that they knew the defunct had bought things, from the pursuer, who was his ordinary furnisher, knowing nothing of the quantity or value, oath in supplement was refused.

*Fol. Dic. v. 2. p. 11. Fountainhall, v. 1. p. 693.*