

No 176.

1632. July 28. LAURIE against PATERSON.

GIFTING or disposing an allowance to use any heirship gear, thereby to prove that one behaves himself as heir, must be proved *scripto vel juramento partis*.
Auchinleck, MS. p. 157.

No 177.

1633. January 11. DALQUHAIRN against —.

IN an action of contravention, pursued by — of Dalquhairn against — for cutting of certain wattels in the pursuer's wood, it was *alleged*, That the defender got licence from the pursuer. *Answered*, Ought to be proved *scripto vel juramento partis*. THE LORDS found it might be proved *prout de jure* as well as the libel.

Auchinleck, MS. p. 157.

No 178.

1700. July 13. GOODIN against MURRAY.

IT being *objected* against a witness, That he was ultroneous, in coming to the messenger, and desiring himself to be cited, the LORDS considered that this was *nuda verborum emissio*, the import of which might be easily mistaken; the two expressions being very near, and yet differing in their import, If I were called, I know that matter, and, Call me, and I'll prove that matter; and, therefore, they found it could only be proved by the witness's own oath; but allowed a diligence for citing the messenger, and witnesses to be present at deponing.

Fol. Dic. v. 2. p. 226. Fountainhall.

*** This case is No 5. p. 9237. *voce* NAUTÆ, CAUPONES, &c.

No 179.

1707. June 17. LIVINGSTON against MENZIES.

IT being sustained as a relevant objection against a witness, That, after citation, he had said he would swear best for the party that would pay him what was due to him; the LORDS found this could only be proved by the witness's own oath; but allowed witnesses to be adduced to confront him; for not only was this a *nuda emissio verborum*, but if witnesses were to be admitted in such a case, there might be a *progressus in infinitum*.

Fol. Dic. v. 2. p. 227. Fountainhall. Forbes.

*** This case is No 69. p. 3265. *voce* DEATHBED.