

**No 614.** any other person's right to the same, if they did not pertain to her, wherein he was not prejudged by this interlocutor, if he pleased to propone the same. But J. C. *Dominium non potest probari per testes quia, Incorporalia non cadunt sub sensibus.* Vid. Bartol. Tract. De Testibus.

Act. Mowat.

Alt. Cunningham.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 270. Darie, p. 246.***No 615.**

The cause of being put in possession of moveables may be proved *prout de jure.*

1628. December 10. CRANSTON against ADAMSON.

PATRICK CRANSTON, assignee constituted by Catharine Pringle, pursues Adamson, who had married the said Catharine's daughter, for delivery of certain goods and gear alleged pertaining to the said Catherine, and wrongously introduced with by her said son-in-law, extending to the avail of 2000 merks. To which it was *answered*, That by a verbal contract of marriage, which afterward was accomplished betwixt the said pursuer's daughter and the defender, she permitted to him the whole goods and gear upon the ground, and put him in possession of her room, he giving to her sustentation in the house with him and her daughter; likeas, he occupied the room, and paid the master the duty therefor, as tenant, for the space of five years preceding the intending of the cause. To this it was *replied*, That this exception could not be proved but *scripto vel juramento partis*. THE LORDS found, That it might be proved *prout de jure.*

*Auchinleck, MS. p. 154.*

1629. July 29.

A. against B.

**No 616.**

EXECUTORS being pursued for spoliation of teinds committed by the defunct, and the libel referred to the defender's oath, the LORDS found, that the executors could not be held to give their oaths *super facto alieno*.

*Auchinleck, MS. p. 151.*

1629. November 27. PATERSON against EDWARD.

**No 617.**

Proof of the property of moveables allowed *prout de jure.*

THOMAS PATERSON pursued Nicol Edward for making certain goods and sums of money forthcoming to him, which he had arrested in his hands, as pertaining to John Mackcubie his debtor. The defender *contended*, That the pertaining of the goods libelled to John Mackcubie could not be proved but *scripto vel juramento partis*, especially considering, that the said John Mackcubie