

*** Auchinleck reports this case :

ARTHUR STRATON pursues his mother Robertson, for removing from the lands of Kirkside. It is *excepted*, By his father's testament it was appointed, that his mother should bruik the whole heritage during her lifetime, and that if they could not agree in household, that she plenish a little room called Scotston, and he should give to his sister the half of the tocher, and to dispone to them the heritable title of a tenement in Montrose ; conform to which the defender had plenished and delivered to her the said room, whereby he had fulfilled the said testament. To which it was *answered*, That his father could not make any such reversion by way of testament; and as to the fulfilling, it could not be proved by the alleged accepting of the plenished room, but must be proved *scripto vel juramento partis*; which the LORDS sustained.

Auchinleck, MS. p. 148.

No 25.

1636. February 5. HECTOR ACHESON *against* EUPHAME HERRING.

UMQUHILE Thomas Hamilton in Leith, and Euphame Herring his spouse, gave bond to Hector Acheson in the Pans, for payment to him of L. 120 for some ale that the said Hector had furnished to them. After Thomas's death, Hector pursues his relict to make payment conform to her bond. *Alleged*, The bond was null *quoad eam*, as being given by her *stante matrimonio*. *Replied*, He offered to prove, that she had promised to pay the same since her husband's decease. The defender *contended*, That her promise was only probable by writ or oath, the matter being of importance, above L. 100, and likewise tending to make a bond null in law effectual against her. THE LORDS notwithstanding found it probable *prout de jure*.

Fol. Dic. v. 2. p. 216. Spottiswood, (PROBATION.) p. 244.

No 26.

1665. June 21. CHRISTIAN BRAIDIE *against* LAIRD of FAIRNY.

CHRISTIAN BRAIDIE, relict of James Sword, having inhibited George Glasford upon his bond, pursues a reduction of a disposition, granted by George to the Laird of Fairny, of certain lands, as being done after her inhibition. Fairny having produced the disposition, it bears to be holograph, whereupon it was *alleged*, That it was null by the act of Parliament, requiring all writs of importance to be subscribed before witnesses, and this disposition wanted witnesses. The defender offered to prove it was holograph. The pursuer *replied*, That the question being *de data*, not that it was subscribed, but when it was subscribed, whether prior or posterior to the inhibition, witnesses could not be received,

No 27.
A holograph writ proves not *quoad datam*, but the date may be proved by witnesses of unquestionable character.