

No 190. That being for the sum of L. 100, it was probable by witnesses ; and a discharge, granted by the Lord Rollo, bearing payment, the defender's father having lived long after the alleged cautionry, and no pursuit intended against him during his lifetime, and the sum libelled being but L. 100 ; the LORDS would not sustain a promise for relief to be proved but *scripto vel juramento*.  
Gosford, MS. No 17. p. 7.

No 191.

A promise of marriage, the granter being dead, found probable only *scripto*.

1670. July 19.

MARGARET COCKBURN against ALLAN LOGAN.

IN a pursuit for aliment, pursued at the said Margaret's instance against the nearest of kin of William Logan, to whom she alleged she had born a child, under promise of marriage, which was proved by several witnesses, in a process before the Commissaries ; it was *alleged* for the defender, That the said William, granter of the promise, being dead seven years ago, and never any action intended against him for completing of the marriage, any such alleged promise was not probable but *scripto* ; and, as to any probation led before the Commissaries, it was *res inter alios acta*. The defenders not being called, and the LORDS having advised this cause, found it to be of a dangerous consequence to sustain the probation of a promise of marriage, after the death of the granter, otherwise than by writ ; and found the case far different, where a promise might be proved by witnesses against the party, being alive, for solemnization, seeing he might object against the witnesses, or propone interrogatories, for clearing of himself, or allege relevant defences, which his nearest of kin could not know. And the case being of itself most unfavourable, the Lords would not sustain any other manner of probation but *scripto*.

Fol. Dic. v. 2. p. 228. Gosford, MS. No 308. p. 135.

1672. January 19.

DEUCHAR against BROWN.

No 192.

Found in conformity with Auchinleck against Gordon, No 181. p. 12382. that a promise of one person to pay a sum for another, is not probable by witnesses.

WILLIAM CATO having bought a web of plaiding from John Deuchar for L. 47 Scots, for which Thomas Brown became cautioner, whereupon Deuchar obtained decret before the Bailies of Edinburgh against Brown, wherein the promise as cautioner was proved by witnesses ; Brown suspends, and raises reduction on this reason, that the decret was unjust, proceeding upon an unwarrantable probation, admitting witnesses to prove a promise, or the emission of words, where there is no bargain between the parties, which is only probable by writ, or oath of party. It was *answered*, That a promise for whatever cause, is valid and obligatory ; and there is no difference of naked pactions, which were inefficacious by the Roman law, but are approved by the canon law, and common custom of nations ; and as for the manner of probation