

No 192. against an alleged cautioner for another person, there was neither law nor practick for it.

THE LORDS having considered this case as of general consequence, and to be a practick for the future, did sustain the defence; and found, that the allegiance of one to be cautioner *ex promisso* for another, who was not concerned, and had no benefit by the bargain or transaction betwixt either parties, was not probable, but *scripto vel juramento*; and that it were of a dangerous consequence, where there was only *nuda emissa verborum*, if witnesses' depositions should be taken to constitute a debt against a person not concerned, seeing, by the civil law, *de verborum obligationibus*, where the stipulation is betwixt parties contracting, there are such solemnities required, and *interrogatio et congrua responsio* necessary to make one debtor.

Gosford, MS. No 445. p. 233.

No 193. 1687. June. COLQUHOUN against M'RAE.

THIS allegiance, viz. That at the executing of the poinding or caption, the defender promised to pay the debt, was found probable by witnesses; but this interlocutor was stopped.

Harcarse, (PROBATION.) No 799. p. 225.

No 194. 1687. December 7. ——— against PROVOST JOHNSTON.

THE LORDS found it probable by witnesses, that a person in prison was set at liberty at the defender's desire, and upon his promise to re-produce the other in prison at a certain day; though it was *contended*, That a promise is only probable *scripto* or *juramento*, except where it is accessory to a bargain probable by witnesses.

Fol. Dic. v. 2. p. 228. Harcarse, (PROBATION.) No 804. p. 225.

No 195. 1732. February 19. KATHARINE HARVIE against CRAWFORD of Milton.

IN a process of adherence before the Commissaries, the pursuer offered to prove a promise of marriage and subsequent copulation; which the Commissaries sustained, the promise relevant *scripto vel juramento*, and the copulation *prout de jure*. Against this the pursuer applied to the Lords by advocacy, insisting, that she should be allowed to prove the promise by witnesses. THE LORDS refused the desire of the bill. See APPENDIX.