

No 630.

1687. *November.* ——— *against JOHNSTON'S ASSIGNEE.*

A DEBT pursued for being referred to the defender's oath, he swore with this quality, that as the pursuer's cedent gave him goods, so he thereafter gave the cedent goods.

THE LORDS did not sustain the quality in the oath as a ground of compensation, nor yet as payment, seeing the deponent did not say, that the goods given to the cedent were in satisfaction of the other goods, and now the cedent was bankrupt.

*Harcarse, (OATHS.) No 745. p. 211.*

No 631.

1687. *December 8.* STEVENSON *against* WRIGHT.

THE LORDS were of opinion, that co-partneries and societies in bargains of victual are probable by witnesses.

*Harcarse, (PROBATION.) No 803. p. 226.*

No 632.

1688. *July.* FORBES of Skellitor *against* DUNGAN SHAW.

A FATHER-IN-LAW being pursued for his daughter's tocher of 2000 merks, he proponed compensation on the delivery of certain goods and cattle, estimated to L. 400, which he offered to prove by the pursuer's oath; and the pursuer (having deponed) that these goods were gifted to him by the defender, it was *objected* by the defender, That the quality of gifting was extrinsic and improbable, because *debitur non præsumentur donare*; and the goods were of value above what is usually gifted among such persons.

THE LORDS sustained the quality as intrinsic; but this was afterwards stopped.

*Harcarse, (OATHS.) No 748. p. 211.*

No 633.

In a reduction of a note granted for the price of goods, upon the head of minority, &c. there is no necessity to

1737. *November 27.* SUTHERLAND of Pronsie *against* LADY KINMINITY.

PRONSIE, when a minor, bought a gold watch from Lady Kinminity, for which he granted his note to her for L. 25 Sterling. In a reduction thereof, upon the head of minority and lesion, it was *alleged* he had been greatly imposed upon in the bargain, as the watch was not worth above one third of the price; and although the pursuer would not have been bound to have restored it, in case he had given the same away for nothing, or been liable in the price,