

No 2.
ant for a year,
is relevant,
and therefore
probable, by
witnesses.

against him, because the Laird of Fintry, tutor testamentar in the Earl's name, promised faithfully that the said tenant should not flit and remove for the space of an year. The allegiance being found relevant and admitted, it was *alleged* by the Earl's advocate, That the same ought only to be proved by writ; for the decree being in writ, nothing could be proved to take it away *in toto vel in parte*, by other writ *quia nihil tam naturale est quam unumquodque solvi eo genere quo ligatum est*. It was *alleged* by the other party, That the promise of an year's tack might be proved by witnesses; which was found relevant by interlocutor of the Lords.

Fol. Dic. v. 1. p. 560. Colvil, MS. p. 325.

1611. June 5.

BAILLIE against SOMERVILLE.

No 3.
It was ob-
jected against
a removing,
that the pur-
suer had prom-
ised verbally
not to re-
move the de-
fender for
two years af-
ter expiry of
his tack. The
promise
found prob-
able by wit-
nesses for
one year, but
for the se-
cond year
*scripto vel
juramento
only.*

WILLIAM BAILLIE in Stanypeth, rentaller of Blackcastle, lying in the barony of Carnwath and sheriffdom of Lanark, summons Margaret Adam, and James Ure, her spouse, and — Somerville, her son of the first husband, to remove therefrom. *Alleged*, No removing, because they bruik the one half thereof by promise of the pursuer not to remove them, and the other half *pro indiviso*. *Replied*, The defender has always acknowledged the pursuer's right of the hail lands libelled, in so far as they have paid him mail and duty for the hail lands. Admits the reply and summons. *2do, Alleged*, The pursuer promised not to remove them for two years after the expiring of the tack, which tack is but lately expired the last Whitsunday 1611. Admits the exception relevant to be proven by witnesses, for bruiking of the lands for one year after the warning, and that it ought to be proven by writ or oath of party for the other year or two.

Fol. Dic. v. 1. p. 560. Nicolson, MS. No 340. p. 236.

No 4.
Found in con-
formity with
the above.
In this case,
the alleged
promise was,
not to remove
the defender
during life,
he paying the
old duty.

1611. June 25.

LOW against LYELL.

JOHN LOW, in Brechin, pursues Thomas Lyell, Provost thereof, to remove from a tenement in Brechin. *Alleged*, The pursuer offered never to remove him during his lifetime, he paying the old duty, *probatum scripto vel juramento partis*.

Fol. Dic. v. 1. p. 561. Nicolson, MS. between Nos 342. & 343. p. 237.