

No 594. which the party had granted paid of that obligation libelled were comprehended in that posterior bond; and so the said posterior bond, with the note of receipt, written upon the first obligation, being respected together, ought to liberate the defender. This duply was admitted to liberate the defender, conform to the note written, as said is, albeit it was delete; but the defender was astricted to prove, that the last bond was once delivered by the defender to the pursuer, and thereafter retired upon payment.

Act. *Belsbes.*Alt. *Hope.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 268. Durie, p. 142.*

No 595.

1628. February 20.

A. against B.

THERE being some witnesses produced at the bar by a man's creditor for proving of a debt, there compeared another creditor of the defender's against whom the witnesses were led, and *alleged* the witnesses should not be received, because he offered to prove that the debt was paid. THE LORDS, in respect of the state of the process, would not admit the allegiance to hinder the examination of the witnesses, unless the proponer of it did verify it *instanter*.

Spottiswood, (PROBATION BY WITNESSES.) p. 245.

No 596.

1629. January 28.

HOUSTON against DONALDSON.

In condicione indebiti, if it be alleged that the party made payment *scienter*, this exception must be proved by writ or oath of party.

Auchinleck, MS. p. 155.

No 597.

1629. February 17.

Low against STRACHAN.

IF a party alleges that he has made payment, by allowance of him that had right to the sum paid, this allowance must be proved by writ or oath of party.

Auchinleck, MS. p. 156.

* * * Spottiswood reports this case :

GEORGE Low pursued Doctor Strachan for 100 merks. He *alleged*, That it was delivered to him by the pursuer, at the direction, or at least the allowance of the Laird of Thornton the pursuer's master; which allegiance the LORDS found probable only by writ or oath of George Low.

Spottiswood, (PROBATION.) p. 243.