by witnesses, which the Lords found ought only to be proved by writ or oath of party; seeing they found, that the setter of the feu having provided himself of that clause by the charter, the receiver ought to have looked to the manner of security which he acquired, which could not be maintained to the defender, nor subverted to the pursuer, but by the pursuer's own deed, which could not be made known but by his writ or oath.

No 144

Clerk, Gibcon.

Fol. Dic. v. 2. p. 224. Durie, p. 562.

1621. June 28.

The Executors of Robert Ferguson against Mr Colin Campbell.

No 145

The delivery of victual is always sustained to be proved by witnesses, although the party be obliged by bond for the delivery thereof. But payment of sums extending to L. 100 or above, no otherwise but by writ or oath of party,

Fol. Dic. v. 2. p. 224. Spottiswood, (PROBATION.) p. 240.

** Auchinleck reports this case ::

THE deliverance of victual may be proved by witnesses, although the pursuer have writ obliging the defender for payment of the victual.

Auchinleck, MS. p. 158.

1632. December 11.

Porteous against Lo. Herries.

No 146.

Fire Lo. Herries being pursued for 500 merks addebted by his father; conform to his bond, as heir to him, who offering to prove that the pursuer had received yearly as much victual as in price would extend to this sum, which he offered to prove by witnesses; the Lords found it not probable by witnesses, but only by writ or oath of party, to take away a debt constituted by bond in writ.

Act. Alt. Nicolion.

Fol. Dic. v. 2. p. 225. Durie, p. 657.

1633. July 23.

La. Aberzeldie against Her Son.

THE Lady Aberzeldie charging her Son for payment of three chalders of victual addebted to her, conform to a contract betwixt them thereanent, and also

No 147. Found in conformity with No 134. p. 12356.

No 147.

intromitted with by him; to pay to her the duties of the lands of which lands were given to her in recompense of the lands which she had renounced to him, being her conjunct-fee of before; and her Son suspending, That the victual was paid;—this reason was found probable by witnesses to be produced at one term without more diets; albeit the charger alleged it could not be proved but by writ, the debt being constituted by writ, which was repelled, seeing the party was obliged to pay her victual yearly, and the delivery thereof was probable by witnesses, and that it was for the same cause, was also presumeable, if the delivery were proved; seeing the party could qualify no other cause of debt to which the delivery of victual could be ascribed; and for the lands given in recompense for the lands renounced, the suspender alleged, That she could seek no more but according to the avail of the lands renounced, the just yearly rent whereof he was content to pay to her: even as in lands given in warrandice of other lands evicted, the warrandice will not exceed the eviction; but, albeit the lands of warrandice were more worth, the same will be limited to the worth of the principal, and no further. This reason was rejected, and the suspender found liable in the avail of the whole lands given in recompense, albeit of more yearly avail than the lands renounced were.

Act. Nairn.

Alt. Nicolson.

Clerk, Gibson.

Fol. Dic. v. 2. p. 224. Durie, p. 689.

No 148. 1636. July 10.

GARDNER against CHALMERS.

In a reduction of a contract entered into by a minor majorennitati proximus, the Lords considering his quality, that he was a public notary the time of signing the contract, and was the drawer of it himself, they sustained the defence, That he had homologated the contract since majority, by payment of annual-rent, to be proved prout de jure, notwithstanding it was to fortify a contract reducible in law, whereby a minor had disponed his heritage.

Fol. Dic. v. 2. p. 220. Spottiswood.

** This case is No 155. p. 9024. voce MINOR.

No 149.

1662. January 7. Earl of Lauderdale against Tenants of Swinton.

A TENANT, who had no tack, was allowed to prove by witnesses payment of his money-rent, not exceeding L. 100 termly.

Fol. Dic. v. 2. p. 224. Stair.

** This case is No 5. p. 10025. voce Payment before Hand.