

merks, which the said Mr David was owing to the said umquhile Thomas his debtor, and the defender *alleged*, That he ought to be assoilzied for so much as he had paid of this sum, before the defunct's decease, to some tailors and baxters, for some furnishings made by them to him, at his direction, which direction he offered to prove by the oath of those persons to whom he made payment. THE LORDS found, that the said direction was not probable by the oath of those to whom the said payment was made, albeit the particulars were but small, and the debt was constituted by writ; and if it were to be proved by witnesses, these could not be witnesses to prove for their own advantage. See WITNESS.

Fol. Dic. v. 2. p. 228. Durie, p. 889.

1661. December 12. GORDON *against* ABERCROMBY.

In a process of ejection the defence being, That the defender entered into void possession, with consent of the pursuer, this consent not being qualified by any palpable fact was not found probable by witnesses.

Fol. Dic. v. 2. p. 229. Stair.

* * This case is No 364. p. 12220. *voce* PROCESS.

1662. July 26. MARGARET ROBERTSON *against* WILLIAM M'INTOSH.

MARGARET ROBERTSON pursues an ejection against William M'Intosh, who *alleged* absolvitor, because he offered him to prove, that he had warned the defender's umquhile husband, and that he dying shortly thereafter, he enquired of his wife, if she would continue in the possession, and she declared she would not, but willingly removed. It was *replied*, *Relevat scripto vel juramento*; but witnesses cannot be received to prove willingness of removing, being *mentis*.

THE LORDS considering that the defender *alleged* no tack nor title in writ, but mere possession, were inclinable to sustain the defence probable, *prout de jure*; but withall, considering the parties were Highlanders, and had great advantage, whoever had the benefit of probation; therefore they ordained the pursuer to condescend what deeds of violence were done in ejecting her; and both parties to condescend what persons were present at the pursuer's outgoing, and the defender's incoming, being resolved to examine all these before answer, so that there might be no advantage in probation to either party.

Fol. Dic. v. 2. p. 229. Stair, v. 1. p. 137.

No 205.
where the ar-
restee alleg-
ed he had
paid great
part of the
debt to
tradesmen,
by his credi-
tor's direc-
tions.

No 206.

No 207
In a process
of ejection, an
alleged con-
sent to re-
move allowed
to be proved
prout de jure.