condition; and some of them deponed that he had a considerable sum of money, far above this in question, there. No 73.

The question was, whether this probation was sufficient to assoilzie; albeit none of the witnesses did particularly depone, that they knew the pursuer's money to have been at Dundee, and lost there.

THE LORDS found that the probation was sufficient, the pursuer giving his oath in supplement, that it was there, and lost there; for they considered, that at the time of the pursuer's requisition, the witnesses proved, the defender declared it was there; and that *ex natura rei*, it was hard to prove particularly, this money being a fungible, to have been lost there, but that it behoved to be presumed so, seeing the man lost his whole means there, and hath been poor ever since.

Stair, *v.* 1. *p.* 130.

1665. *June* 15. AIKMAN *against* ———

No 74.
Probation of a defence against payment of a bond admitted partly by oath and partly by witnesses.

AIKMAN having charged upon a bond of borrowed money ——— suspended, and *alleged*, That the charge was truly for a prentice-fee, for a boy to a writer, who was obliged to educate him three years, and it is offered to be proved by witnesses that he beat the prentice, and put him away with evil usage, within a year and an half, and so can have no more at most than effeired to that time. The charger *answered*, That he could not divide the probation, in one single defence, both by oath and witnesses, and that he could not take away writing by witnesses in whole or in part.

THE LORDS sustained the probation by oath and witnesses, as proponed.

Stair, *v.* 1. *p.* 282.

1666. *February* 27. CREDITORS of Lord GRAY *against* Lord GRAY.

No 75.
A proof by witnesses allowed, that an apprising was satisfied.

CERTAIN Creditors of the Master of Gray's, being infeft in annualrent out of certain of his lands, pursue poinding of the ground. It was *alleged*, for the Lord Gray his son, absolvitor, because he has right to an apprising, and infeftment of Alexander Milne, which is expired, and prior to the pursuers' infeftments. It was *answered*, That the apprising was satisfied by the umquhile Master of Gray, and a blank assignation thereto was taken, which was amongst the Master's writs, and this Lord filled up his name after the Master's death. This being unquestionably relevant, the difficulty was concerning the manner of the probation.

THE LORDS, before answer, ordained witnesses *ex officio* to be examined; whereupon the Lord Gray's brother was examined, who acknowledged he saw the blank assignation by his brother; and Mr Robert Prestoun being examined,

No 75. and several other witnesses, above all exception, and also the Lord Gray himself, who acknowledged he got the assignation blank after his father's death, but not amongst his writs, and that he gave a bond therefor; many of the Lords thought, that seeing, by the late act of Parliament, the apprising, though expired, was redeemable from him, for the sum he truly paid for it, that it were more just and safe that he should be preferred, unless the creditors would purge, and satisfy the sum, and that it were a dangerous example to find so important a writ, as this assignation, to be taken away by witnesses; yet the plurality found the testimonies so pregnant and unquestionable, they found the reply proved thereby, and found the apprising retired, and satisfied by the debtor, and so extinct.

Stair v. 1. *p.* 369.

No 76. 1666. *July* Isobel Tosh *against* David Crookshank.

Isobel Tosh pursuing reduction of a decreet, pronounced *in foro contradictorio*, and *in præsentia*, on this ground, that it was extracted by the clerks unwarrantably, contrary to what was done by the Lords, which they offered to prove by the oaths of the advocates on the other side; it was *answered*, This were a ground to reduce all the Lords decreets *in foro*.

Yet the Lords sustained the reason to be proved, as said is.

Stair, v. 1. *p.* 391.

No 77.
Witnesses were admitted to explain a minute, although they might not have been admitted if the deed had been formally extended.

1666. *December* 19. Mr James Cheap *against* Mr John Philip.

Mr James Cheap charges Mr John Philip to fulfil a minute of alienation of lands of Ormiston, sold by Mr James to Mr John, whereby Mr John was obliged to pay 25,500 merks, as the price, or to assign sufficient bonds therefor: He suspends, and offers to consign bonds, and, among the rest, a bond of 8000 merks due by the Town of Edinburgh. The charger *alleged*, That he was not obliged to accept that bond, because at the time of the agreement, and subscription of the minute, the charger particularly excepted the Town of Edinburgh's debt, and the suspender declared that it should be no part of the price, which he offered to prove by the writer and witnesses insert in the minute. The suspender *answered*, That witnesses were not competent in this case, where the words of the minute are not dubious, but clear and general of any sufficient debt, for if this were sustained, the alteration of the price, as well as the manner of payment, might be proved by witnesses. It was *answered*, That it was no way alike, nothing being here in question but the manner of payment, and not the quantity of the price.