

No 624. they could prove the cause of their intromission, which would marr all commerce.

THE LORDS found the libel not to be proved otherways than by the defender's oath, that thereby he might qualify the cause of his intromission, and would admit no witnesses, unless the pursuer condescend upon the way how he ceased to possess; which might take off all presumption that the intromission was not upon any bargain or gift, but was vicious.

Fol. Dic. v. 2. p. 270. Stair, v. 2. p. 59.

* * A similar case is reported 27th January 1665, Scot against Fletcher, No 287. p. 11616, *voce* PRESUMPTION.

1672. June 5. MUNGO WOOD *against* KELLO, (OR ROLLO).

No 625.

One witness with a merchant's account and his own oath in supplement upon the price and delivery of goods found sufficient to constitute a debt against the buyer's executors, although above L. 100.

IN a pursuit at Mungo's instance for merchant ware, the delivery thereof being admitted to his probation, having only produced for proving thereof his own compt-book, bearing the particulars, and adduced one witness who had at that time been his own apprentice, but was now out of his service; and, in supplement, offering to give his own oath upon the verity of his account, both as to the particulars delivered, and as to the prices;

It was questioned amongst the LORDS, if that was a sufficient probation to constitute a debt above L. 100? THE LORDS did find the same sufficient, in respect of the great prejudice that merchants might sustain if they were restricted to a full probation, especially if the parties were dead; and therefore decerned the probation by one witness, being *sempierna*, and the compt-book, with the merchant's oath in supplement, was sufficient to make it a full probation.

Fol. Dic. v. 2. p. 262. Gosford, MS. No 487. p. 256.

* * Stair reports this case :

MUNGO WOOD, merchant in Edinburgh, pursues Rollo of Powhouse, as heir to his father, for payment of a merchant-account, current for several years, whereof the last articles were within three years of the pursuit.

THE LORDS found the whole probable by witnesses; and, at the advising of the cause, the whole articles of the account being fourteen, they were all proved by two witnesses, except some few in the middle of the account, not exceeding L. 10 Scots, which were proved but by one witness; and seeing umquhile Powhouse died shortly after the taking on of the account, so that his oath could not be taken;

THE LORDS took the pursuer's oath in supplement; and decerned for the whole; one of the witnesses was the receiver of the goods, and the other had been the merchant's servant at the time, who gave them off.

Stair, v. 2. p. 83.