

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. I. p. 130.

1665. June 15.

AIKMAN against _____

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. I. p. 282.

No 74.

Probation of a defence against payment of a bond admitted partly by oath and partly by witnesses.

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

CERTAIN Creditors of the Master of Gray's, being infest in annualrent out of certain of his lands, pursue pointing of the ground. It was *alleged*, for the Lord Gray his son, absolvitor, because he has right to an apprising, and infestment of Alexander Milne, which is expired, and prior to the pursuers' infestments. 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.

A proof by witnesses allowed, that an apprising was satisfied.