

by witnesses ; but, to be a ground of compensation, or to infer satisfaction or a discharge of a written bond, was not probable but *scripto vel juramento*. THE LORDS found the allegiance only relevant to be proved *scripto vel juramento*, and not by witnesses ; reserving action for the price of the delivered goods as accords.

Gosford, MS. No 722. p. 438.

\*\*\* Dirleton's report of this case is No 22, p. 2565. voce COMPENSATION.

1683. February.

A. against B.

No 152.

A FATHER having obliged himself, in his eldest son's contract of marriage, to make payment of 1000 merks to him, and also to make him equal sharer in the goods, sums of money, heritages, and others pertaining to him the time of his decease, whereby one of his children should not have more of his estate than another ; and having afterwards, in his second son's contract of marriage, provided the greatest part of his estate to him ; this was quarrelled by the eldest son.

It was *alleged* for the second son ; That the obligation relating to goods the father should have the time of his decease, did not hinder him to dispose of his estate to any person, by a deed *inter vivos*.

*Answered* ; The father could not disappoint the obligation by lucrative deeds.

THE LORDS found the father might provide the second son to a competent provision effecting to his estate, but not exorbitantly to disappoint the obligation ; and, although the first son had a stocked room, and an estate far above the 1000 merks in his contract ; which the defenders *alleged* ought to be presumed given him by his father, in satisfaction of the obligation, and which they offered to prove by witnesses ; the LORDS found the payment only probable *scripto vel juramento*, the obligation being in writ. See PROVISION TO HEIRS AND CHILDREN.

*Fol. Dic. v. 2, p. 225. Harcarse, (CONTRACTS OF MARRIAGE.) No 353. p. 88.*

1687. June 14. AGNEW and MUIR against AGNEW of Croich.

No 153.

THE LORDS found, in the case of Agnew and Muir *contra* Agnew of Croich, That the delivery of victual for extinguishing the irritancy of a back-tack in a wadset was probable by witnesses ; though it took away writ, and might extinguish the whole wadset. They had formerly found this satisfaction and payment probable by witnesses for extinguishing an infestment of annualrent, 4th