

February 1671, Wishart, No 3. p. 9978.; but had not extended it to wadsets till now.

No 153.

Fol. Dic. v. 2. p. 224. Fountainhall, v. 1. p. 456.

* * A similar decision was pronounced, 7th January 1662, Lauderdale against Tenants of Swinton, No 5. p. 10023. *voce* PAYMENT BEFORE HAND.

1687. December 8.

JAMES HUME *against* ROBERT HYSLOP.

No 154.

In a pursuit at the instance of James Hume *contra* Robert Hyslop, for the price of a horse,

Alleged for the defender; That he had proved payment by two witnesses, who deponed before the Commissary-Clerk.

Answered for the pursuer; Payment of money is not probable by witnesses; *2do*, The deponents were not witnesses to the bargain, the alleged payment being a month posterior thereto; *3tio*, They say only, that they saw the defender deliver twenty dollars to the pursuer, and not that the money was paid as the price of a horse.

Replied; Witnesses are competent to prove payment of bargains entered into without writ, especially the prices of horse; *2do*, Twenty dollars was the price of the horse, and ought to be ascribed to that cause, unless the pursuer prove another cause; *3tio*, The libel should bear, that the price is resting owing, which the pursuer must prove.

THE LORDS sustained the probation by the depositions of the witnesses; and assolizied the defender.

Harcarse, (PROBATION.) No 803. p. 225.

1697. December 23.

LAURIE *against* CRAIK.

No 155.

A PURCHASER of land by a verbal bargain, alleged he had paid the price, after which there was no *locus pœnitentiæ*. This was found only relevant to be proved *scripto vel juramento*, because witnesses could not well know whether the money was paid in contemplation of the bargain, or whether the seller reserved himself freedom to resile upon repaying the money.

Fol. Dic. v. 2. p. 224. Fountainhall.

* * This case is No 33. p. 8425. *voce* LOCUS PœNITENTIÆ.