

- No 1. Leith till he should come home, where they continued so long that they did spoil, whereupon he sold them at such rates and to such persons as could be got; and that he was not debtor in the money that was got for them, because the said Harry was debtor to him in greater sums. THE LORDS found they would receive Robert Learmonth's oath with the quality given in, that the wines by lying in his hands, by the debtor's order, were spoiled, and the price was such as he deponed upon; but would not receive that part of his oath, bearing that Moffat was debtor to him, unless he would instruct the same by writ.

Newbyth, MS. p. 10.

1669. February 6. BROWN against MITCHELL.

- No 2. BROWN pursuing Mitchell as debtor, by an account whereof one article being L. 450 borrowed money, and the rest for merchant-ware delivered, the whole being referred to his oath, he did depone, That as to the borrowed money, he was debtor by a ticket, but that it was delivered up to him upon compensation, due for merchant-ware, received by Brown's wife before her marriage, to whom Mitchell had granted the ticket. THE LORDS sustained this qualified oath to exoner the defender, notwithstanding that it was alleged, that he ought to prove the delivery of the merchant-ware; because the debt being once constituted by writ, which was delivered back and destroyed, so that they had no other way to prove the same but by his oath, the pursuer could not refuse to take it with the foresaid quality; neither was it respected, that the pursuer alleged, that the qualified oath did bear, that the ticket was given back by Brown's wife for a debt resting by her first husband, which they alleged ought to be proved: Notwithstanding whereof the quality was sustained without necessity to prove her first husband's debt.

Fol. Dic. v. 2. p. 296. Gosford, MS. p. 37.

1670. January 6. REID, Englishman, against BINNING.

- No 3. BINNING being charged upon his bond, for payment of L. 10 Sterling, did suspend upon payment of a part of the money, extending to 40s. Sterling, which he referred to the charger's oath; who having deponed *qualificate*, that as he confessed he received that sum, so it was in satisfaction of several particulars not relating to the bond; it was debated, if that quality should be received, unless it were otherwise instructed than by the charger's oath, seeing the suspender had no other way to prove the payment; and it was alleged that

he ought to stand to the qualification. THE LORDS, notwithstanding, did not sustain the quality, unless the deponent could instruct otherwise than by his own oath, but reserved him action for those particulars, in respect that the suspender being charged upon his bond, where it was confessed that a part was paid, he might in law ascribe the same to the bond, if he had a simple receipt bearing no cause; and if the charger had entrusted for any other sum, or particular goods, he ought to have taken his bond or ticket therefor, otherwise he could crave nothing of that sum in satisfaction of any other cause which he could not instruct.

No 3.

Fol. Dic. v. 2. p. 295. Gosford MS. p. 58.

*** A similar decision was pronounced. February 1730, Cameron against Danskine; No 14. p. 13207.

1676. *January 12.* CAMPBELL *against* DOUGLAS.

No 4.

A BARGAIN being referred to the defender's oath, he deponed, That there was such a bargain as libelled, but that it was agreed to be perfected in writ, and that before the writings were perfected he did resile. This quality was found intrinsic.

Fol. Dic. v. 2. p. 296. Stair.

*** This case is No 63. p. 8470., *voce* LOCUS POENITENTIÆ.

1678. *November 9.* JOHN GORDON, in Aberdeen, *against* JOHN CHRISTIE there.

No 5.

BEING pursued for some money he was trusted to receive, he depones, he sent it by another, and he was empowered so to do. THE LORDS admit the quality, reserving action against that other.

Fol. Dic. v. 2. p. 296. Fountainball, MS.

1685. *January 20.* A. *against* B.

No 6.

ONE pursues his wife's father for payment of 2000 merks of tocher, because, though he had confessed the receipt of it in his contract of marriage, yet that discharge was elicited, and given by him *sub spe numerandæ pecuniæ*; and this being only probable *scripto vel juramento*, and, referring to his father-in-law's oath, he deponed that it was communed it should be put in; and that it was.