

the bond corroborated, upon any intrinsic nullities, as the want of witnesses, or the writer's designation, or the like; yet it is ever competent to the granter of a corroboration, to except, that the debt in the original bond is not due; especially where the exception is founded upon the creditor's own fact and deed, as that the original bond was discharged by him: and upon the matter, the back-bond founded on by the pursuer imports a discharge.

The Lords found the reason of reduction relevant, and assigned to the pursuer a term to recover the back-bond.

Page 414.

1710. *June 27.* The MAGISTRATES and PROCURATOR-FISCAL of NEW-GALLOWAY *against* JOHN CANON of Barley.

AT discussing a suspension of a decret of the Bailies of New Galloway, fining John Canon in 300 merks for swearing thirty oaths, that is, in ten merks for each oath, conform to the *Act 19. Par. 1. Sess. 1. Act 22. Par. 2. Sess. 3. Ch. 2.* upon this ground, that the act of Parliament, imposing ten merks for swearing *toties quoties*, is to be understood of ten merks, not for every oath, but for every conviction; as the words *toties quoties* are taken in the *Act 38. Par. 1. Sess. 1. Act 21. Par. 2. Sess. 3. Ch. 2.* and therefore, in church judicatures, a person is never censured as guilty of relapse, till after conviction. The Lords found, that *toties quoties* in the act of Parliament is to be understood of every oath, and not of every conviction only. But they modified and restricted the fine to L.100; in respect it was alleged for the suspender, that the oaths were emitted by him in passion, when provoked by abuses he met with from the Magistrate and his coy-duke, who tempted him to swear, that they might catch him in a fine: and preceding provocation extenuates the punishment of crimes *in foro soli*, though not *in foro poli*; and it may be said of oaths vented in passion, (which is *brevis furor*,) that *lingua juravi, mente juravi nihil*.

Page 415.

1710. *July 4.* JOHN WHITE, late Bailie of Kirkcaldie, *against* JAMES HENDERSON and other Tenants in Birkhill.

JAMES HENDERSON, Alexander Donaldson, William Paterson, and John Morris, tenants in Birkhill, taken with caption for a civil debt, at the instance of Bailie White; having, to obtain their liberty, obliged themselves conjunctly and severally, by a bond of presentation, to pay the debt in the caption to the Bailie, against the 20th of June, 1709, or else to present themselves prisoners to the messenger that day, betwixt eleven and twelve hours, within the dwell-