No 32. servant was found. He was ordered to be re-examined.

shown to Maitland when he gave his oath by inadvertence in the close of the last session; therefore craving that Maitland might be examined upon the sight of the count written by his own hand, in respect that he had now seen the account, and was thereby brought to remembrance. The Earl opponed his decreet *in foro*, and that Maitland had deponed, and that it was competent to Mowat to have craved his re-examination before sentence.

THE LORDS ordained the matter to be discust upon the bill, and ordained Maitland yet to be re-examined upon the sight of the account, which would not clash with his former oath, being only as to his remembrance. Likeas, they found that Maitland never compeared to depone, but gave in his oath in writ, without inspection of the account.

Fol. Dic. v. 2. p. 14. Stair, v. 2. p. 224.

No 33.

1677. *June* 8. CAMPBELL *against* TAIT.

THE libel being referred to the defender's oath, and he having declared, upon a general interrogatory, that he was not owing the sum acclaimed, it was *urged*, the time of the advising of the oath, That the defender should declare, whether or not he had gotten a parcel of lint, and what way he had paid the price of the same.—THE LORDS found, that he should not be urged to declare upon that interrogatory, in respect it was not desired he should be interrogated upon the same when he did declare; and having denied that he was any ways debtor, he would be involved in perjury, if, upon a special interrogatory, he should acknowledge that he was debtor upon the account therein mentioned.

Advocates, *Stewart & Swinton.* Clerk, *Mr Thomas Hay.*

Fol. Dic. v. 2. p. 14. Dirleton, No 453. p. 220.

1678. *November* 30. HUSBAND *against* BLAIR.

No 34. An oath having been taken in general terms, the party was not allowed to be re-examined on special interrogatories.

Special interrogatories ought to be put first; then general.

IN a competition betwixt Blair of Ardblair and Husband, there being two bonds of the same sum granted by Ardblair within some few months of each other, Husband *alleged*, That both bonds were for one cause, and the one being satisfied, satisfied both, which the LORDS would not sustain upon presumption, that the bonds were for one sum, and near one time; and therefore Husband has referred the verity thereof to Ardblair's oath, who deponed negative; and thereafter Husband desired him to be re-examined, What was the cause of these bonds? It was *answered*, That if that question had been put to him before he deponed generally negative, it had been pertinent, but now it is not competent; for thereby the deponent might be brought to prevaricate and

deny the truth, least his oath should clash, or, by confession, acknowledge his perjury in his first oath; and therefore it was against charity and humanity to ensnare men, by first asking the general interrogatory, and then proponing special ones, though at the same time, much more *ex intervallo*. It is true, where a party adjects a quality, not being referred to his oath, he cannot thereby exclude the other party from expiscating the truth by special interrogatories; but it is not so when a matter is referred by the party to oath. It was *answered*, That Ardblair was examined when Husband was not present, and did depone, upon the point in the act referred generally to his oath, that the cause of both bonds was the same. It was *replied*, That there was here no collusion or clandestine course, but Ardblair came publicly to the Bar and made faith; and, in the afternoon, did depone upon the act as it stood; neither are special interrogatories necessary, though the party may use them if he please, and therefore not having offered them before the oath was given, in due time, he cannot be heard thereafter. No 34.

THE LORDS found, that, after the party had deponed in general, either upon the act or general interrogatory, he could not thereafter be examined upon any special interrogatory, that it might infer any contradiction to his oath on the general, and did resolve to keep that method in examination, to examine first upon the special interrogatories, if any were, and last upon the general.

Fol. Dic. v. 2. *p.* 15. *Stair, v.* 2. *p.* 651.

*** Fountainhall reports this case:

THIS was found relevant to annul a comprising, that they offered to prove, by Ardblair's oath, he had since taken a bond in satisfaction of the sum in the comprising, though the bond bore borrowed money; and he having deponed *negative*, but not having told what was the cause of the bond, the LORDS refused a bill craving a re-examination of him upon that.

Fountainhall, MS.

1702. *November* 10. DAVID AITKEN *against* JAMES FINLAY.

No 35.
A defender, to whose oath a libel had been referred, acknowledged he had received the money, but that it was in payment of a

IN a concluded cause, David Aitken *contra* James Finlay in Balchrystie, the pursuer had offered to prove, by the defender's oath, that he owed him 300 merks, which he had given him on his promise to repay it; as also, had intromitted with thirty sheep, the value whereof he libelled, with L. 100 as their profits since. Finlay depones, and confesses he received the money; but adds, that it was in payment and satisfaction to him of as much due to him by Aitken, and that he never promised to repay it; and as to the sheep, acknowledges he took nine ewes of the pursuer's, but it was by virtue of an order and