

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.

No 6.

neither paid, nor promised to be paid, and so there could be no *spes* in the case. THE LORDS demurred a little, but inclined to assoilzie the father-in-law.

Fol. Dic. v. 2. p. 295. Fountainball, v. 1. p. 333.

No 7.

One examined upon oath, whether money he had lent to a corporation belonged to a third party, deponed, that party (now dead) had put money in his hands, but afterwards recalled it. The quality found intrinsic.

1685. February 20. SIR PATRICK HOME *against* MR ROBERT COLT.

THE case between Sir Patrick Home and Mr Robert Colt, Advocates, about the means of one William Hepburn, sutor in the Canongate, was heard. Hepburn having been examined on death-bed, on a petition given in by Sir Patrick Home to the Bailies of Edinburgh, if the money he had lent to the Incorporation of the Cordiners there, was the money of Captain Stewart, to whom Sir Patrick was confirmed executor? He confessed, the Captain, a little before his death, had laid L. 100 Sterling in beside him, but that he afterwards called for it, and divided it amongst his soldiers. As also the Deacons, and Masters of the said Trade, being examined, (which the LORDS found irregular, to examine a man's debtors, to whom the money belonged,) some of them declared, he called it Captain Stewart's money, which he might do, under this pretext, to seek better caution for it. This cause being advocated, and the oath of Hepburn alleged to contain an extrinsic quality, and that he ought to prove his restoring the money to Captain Stewart, the LORDS, on Castlehill's report, found the quality intrinsic, and therefore assoilzied. See 1st July 1624, Kinloch against Lord Conservator, *infra, h. t.*

Fol. Dic. v. 2. p. 296. Fountainball, v. 1. p. 342.

No 8.

1687. January.

TROTTER *against* CLARK.

JOHN TROTTER having sold to George Clark five tons of wine; and John Trotter having pursued Clark before the Dean of Guild of Edinburgh, for payment of the price agreed upon; and the bargain being referred to Clark's oath, he acknowledged it, but deponed that he refused to accept of the wines, in respect they were spoiled and insufficient; and the oath being advised, the Dean of Guild found the quality of the oath, anent the insufficiency of the wines, to be extrinsic, and did resolve in an exception, and ought to be otherwise proved than by Clark's oath; and Clark having raised suspension and reduction of the decret, upon this reason, That the Dean of Guild had committed iniquity in finding that quality, in relation to the insufficiency of the wines to be extrinsic; the LORDS found the quality of the oath to be intrinsic, and therefore suspended the letters, and reduced the decret.

Fol. Dic. v. 2. p. 296. Sir P. Home, MS. v. 2. No 862.