

enforcing these purposes ; which Lord Arbuthnot and other heritors and tenants endeavoured to suspend, chiefly on two grounds ; first that it was not made on the third Tuesday of May, in terms of the act 5th Geo. I. ; 2dly, that they could not oblige tenants to repair roads at a distance. Answered to the first ; By the act 1669, the first Tuesday of May is the day appointed, which is not repealed but ratified by the act 5th Geo. I., and is the usual day when the roads are ordered, being commonly the day of chusing the collector. To the second, That it would be oppressive to oblige tenants to repair roads at a distance, while there were others repairing that lay nearer ; but none of the acts limited them not to call the tenants, but what lay near them, or that lay at any certain distance ; and such a limitation would be unjust and unreasonable, and in many counties render the repairing the roads impracticable. The different bills of suspension were refused by two different Ordinaries, and one by three Ordinaries ; and this day a reclaiming bill was unanimously (as I am told) refused. I was in the Outer-House.

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### QUALIFIED OATH.

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No. 2. 1736, Feb. 18. JEAN BUDGE, &c. *against* M'KAY of Strathy.

(THIS case is expressed in the manuscript notes in the same words as in the text.)

No. 3. 1736, Dec. 3. CREDITORS OF MENIE *against* BROOMFIELD.

See Note of No. 6, *voce* ARRESTMENT.

No. 4. 1737, Jan. 18. MOFFAT *against* MOFFAT.

THE Lords found the quality in the defender's oath intrinsic, viz. that some time after the bargain of sheep, the pursuer ordered him to pay the price to the pursuer's brother-in-law. The Lords were divided, and among others, I own I thought it was extrinsic, till a decision was cited, 6th July 1711, Clerk *against* Dallas, (Dict. No. 12, p. 13,213.) which determined me.

No. 5. 1740, Jan. 29. SUTHERLAND of Forse *against* SUTHERLAND.

KINMINITY having got an indorsation from the poor woman to a bill of 350 merks, which she alleged to be in trust ; he acknowledged the getting the indorsation, but said it was a gift. The question was, Whether this was intrinsic ; and indeed if the circumstances were true, the thing seemed improbable ; at least it seemed to be too great a donative. Several of us, particularly Royston, Dun, Murkle, *et ego*, were clear that it was intrinsic ; but the President thought that when the facts set forth in the intrinsic quality seemed probable, he would believe the quality, but if the fact was improbable, he would not believe it, without further proof. This I could not agree to, or think that intrinsic or extrinsic could depend upon the Judge's opinion of the facts being probable or not,

and I mentioned a decision, 13th June 1728, L. Badefurrows against Mr Francis Downie. However the Lords remitted to the Ordinary to give a proof before answer of the various circumstances at the time of the indorsation.

No. 6. 1742. Nov. 13. LORD EGLINTON *against* LADY FORRESTER.

A BILL by Lord Elphingston to Lord Forrester in 1716 being sued up; and a question arising upon the prescription, which was appointed to be heard in presence; to avoid that dispute the pursuer referred resting owing to Lord Elphingston's oath; who on oath acknowledged the bill, and that it was not paid, but added that before granting the bill he was creditor in a greater sum to Lord Forrester, and that at a meeting a short time before Lord Forrester's death, he promised to give up the bill how soon it came to his hands. The first quality of compensation was found extrinsic agreeably to many precedents, because compensation supposes both debts resting owing, and therefore he must prove the debt resting to him. But the promise afterwards to give up the bill was found intrinsic, and therefore the allegiance resting owing was found not proved. Arniston thought if only the verity of the subscription, and that it was not paid, had been referred to oath, the quality would have been extrinsic.

No. 7. 1751, Fee. 20. GOVAN *against* PEDAN.

PEDAN sued Govan for wages as chief-mate from Carolina to Bo-ness, and referred the libel to oath. He deponed that he had in the outward voyage hired Blair as chief-mate and him as second-mate, (and produced the agreement with him and the other sailors;) that at Charlestown Blair was discharged, and he hired the pursuer as chief-mate at Blair's wages, and so continued from 7th September to 23d October, that they were put back to Charlestown, when the pursuer refused any longer to serve as chief-mate, but only in his former station as second-mate, and desired him to hire another man; that he thereupon hired Crichton as chief-mate, and that both Crichton and the pursuer kept journals. Drummore found Pedan entitled to wages as chief-mate in the homeward voyage; and that the quality was extrinsic. But on a reclaiming bill, we altered, found the quality intrinsic, and the pursuer entitled to wages from October, only as second-mate.

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RANKING AND SALE.

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No. 1. 1733, Nov. 17. A. *against* B.

IN a sale a privilege of grazing ten sheep with the tenants but not converted, in case the sheep were not sent, was delete out of the scheme, together with capons, poultry, and carriages. The President was against deleting the sheeps pasturage.

\* \* (This case is on the first page of the first volume of the manuscript notes, but all the cases on that page and on a part of the next are scored across with a pen.)