

1765. *August 9.* DUKE of HAMILTON *against* ARCHIBALD DOUGLAS.

THIS was a question about the exhibition of papers in the hands of Mr Douglas's agent to prove his illegitimacy; and the Lords went so far as to ordain the agent to make a general exhibition of all letters and other papers in his hands, in which mention was made of Mr Douglas and his twin brother. But this was done upon the last day of the Session, and not much opposed by Mr Douglas.

1765. *November 14.* MARGARET WYLLIE *against* ———.

[*Faculty Collection, IV. No. 26.*]

A WIDOW was called to an account by the executors of her husband, and it was referred to her oath whether she had not intromitted with her husband's effects. She deponed that she had got from him, two or three days before his death, twenty-four guineas as a reward for her care and attendance upon him during his last illness: The question was, Whether this was an intrinsic quality in her oath? Lord Alemore found that it was extrinsic, because it was dangerous to allow people to lay to their hands and intermeddle with the effects of a defunct, and then free themselves by their own oath: But his interlocutor was unanimously reversed, upon the principles laid down by my Lord Pitfour concerning extrinsic and intrinsic. He said, when the obligation was to be constituted by the oath of the defender, every quality and condition adjected by him to the constitution of the debt was intrinsic, because it was *pars ejusdem negotii*; for example, if a man acknowledged that he had received money from another, but that it was in payment of a debt which that other owed him, or that it was to be given to such a man, or laid out in such a way; and that accordingly was done. For payment, or performance, by which the obligation is dissolved in the natural way, is always held to be *pars ejusdem negotii*, though it do not happen at the same time that the obligation is entered into: for example, if the defender swears that he got from the pursuer a loan of so much money, and repaid it at any distance of time, that quality will be intrinsic; but if he says that he did not pay the money, but that it was compensated by a debt which the pursuer owed him, or that he paid him, not in money, but by delivery of goods, which the pursuer accepted in place of payment, this is *aliud negotium*, therefore extrinsic, and to be proved otherwise than by the defender's own oath.

In this case, as the defender acknowledged that she received the money, but adjected the quality that it was a donation, there is no doubt, according to the principles above laid down, but that this quality was intrinsic.