

defender having given a back-bond of that same date, whereby he was obliged never to regret the said bond and disposition, bearing a receipt of the money, and an obligation to make payment, and an assignation of the moveables, for farther security, was sufficient to instruct the debt, and he was not obliged to prove it otherways by writ, being content to give his oath, that the bond was for sums of money truly delivered. THE LORDS found that there was a difference betwixt a disposition made for an onerous cause only, and a bond of borrowed money bearing a special sum, and an obligation to pay, which liberates from the necessity to prove otherways *scripto*, that a brother was debtor, whereas in the first case they must condescend on a special onerous cause, and instruct the same otherways then by his own oath; and therefore they found it sufficient the defender should make faith, that the borrowed money was a true debt, and had no respect to the back-bond on any presumption founded thereupon, that the bond was simulate, seeing it did only contain a forbearance of execution, which might be easily granted by one brother to another.

*Gosford, MS. No 639. p. 371.*

1677. November 15. THOMSON against ROSS.

No 15.

THE LORDS in this affair took summar trial, upon a bill of a forgery and circumvention, in hatching up a false execution of a charge of horning, because in a poor man's cause. *2do*, They allowed to take a party's oath in an act of fraud, though the witnesses had proved nothing of it, and though two manners of probation are not consistent, nor is it usual to take a party's oath for proving a forgery, whereunto he has accession, or where he has used the false writ.

*Fol. Dic. v. 2. p. 13. Fountainhall MS.*

1678. July 24. GORDON of Seton against CRUIKSHANKS.

No 16.

A decret arbitral was reduced, because year and day were expired, between the submission, and it. Then *alleged* absolvitor because the pursuer invaded him. THE LORDS found invasion relevant to be proven either by his oath or by witnesses, though the invasion was already judged by the Sheriff and they fined for it.

1679. January 23.—In a riot pursued by one Cruikshank, against James Gordon of Seton, both merchants in Aberdeen, the council found James Gordon the first aggressor, and therefore fined him in 400 merks.

*Fol. Dic. v. 2. p. 13. Fountainhall, MS. & v. 1. p. 36.*