sition. Yet, in a case of *Sir James Murray of Skirling's* in 1671, where a debt (which they could prove by writ) was referred to his oath, and he confessed it, but withal deponed it was paid; the Lords divided the quality from the oath, and found it proved the debt but not the payment, which resolved into an exception, and which they only would allow him to prove *aliunde*. See Durie, 1st July 1624. *Vol. I. Page 12.*

1679. *January 22.*—Sir Alexander Fraser of Doors against Sir James Hamilton, (30th July 1678.) The Lords having then ordained annualrent from the date of Sir James his father's bond till payment, Sir James presented a bill of suspension, and craved, since it was a double English bond, it might be regulated by the law of England; and so he might be no farther liable than in the double sum, which *ex eventu* here was less than the annualrents.

Answered,—If the *cursus usurarum* had been stopt by payment, before the interest swelled bigger than the double of the sum, then the debtor would have had his election, and would rather pay the annualrents than the full double bond. *Ergo, quem sequitur commodum, eundem debet et sequi incommodum;* and double English bonds, by our Scotch law, *ex quadam ἐπιεικεια, et moderatione juris,* are ever interpreted to be the principal sum and its annualrents; the double being a *pœna* with them, (when the canons of the Popish church discharged annualrents;) and with us, to exact it were usury. And though, by the Roman law, *l. 27 C. de Usur.* Justinian discharges *usuras currere ultra duplum sortis,* yet we have no such way *quo sistitur usurarum cursus,* with us. See anent the interpretation of English double bonds, Dury, *27th February* 1627, *Lawson.*

Notwithstanding whereof, this case being reported to the Lords, they sustained the calculation of annualrents only until the same amounted to the double of the sum advanced to and received by the debtor; and found the suspender, Sir James, was not liable to the annualrents which exceeded the said double bond: and which the Lords decided without so much as one contrary vote. *In dubiis, quod minimum, benignius, et levius debitori, id sequimur, L. 9 D. de R. J.* *Vol. I. Page 35.*

1679. *January 23.* George Young *against* John Hay and Andrew Ker.

In the wrongous imprisonment and oppression pursued by George Young, late bailie in Winchburgh, against Mr John Hay, sheriff-depute of Linlithgow, and Mr Andrew Ker his clerk; the Lords found the libel relevant, and proven by the defender's own answers, as much as might infer an arbitrary punishment; in so far as Woodcockdale confessed there was such an act in their shire, discharging any of the inhabitants of the sheriffdom to pursue before any other court, except themselves and the commissaries. And they found it an absurd act, and prejudicial to regalities; (yet it is known that several courts and judicatories in Scotland make such acts;) and that he justified and defended the fining of George Young in fifty pounds Scots, and his imprisoning him on that act. Therefore they rebuked him publicly, and ordained him, so soon as he went home, to raze said act out of the sheriff-court books. And fined him in L.100 Scots, to be given to George Young for his charges and expenses. *Sub velamine*

et prætextu officii judicem crimen committere is a greater crime than in another, says Bartolus. *Sub umbra juris scientiæ sæpe perniciose erratur, l.* 91, § 3, *D. de V. O.*

The libel concluded deprivations against the clerk, upon the 81st Act, Parl. 1540, imposing that penalty on clerks that refuse an extract of instruments taken in their hands. In this cause the Council was displeased with George Young; because, in purging the witnesses of partial counsel, it appeared they had got money; whereas it is allowed to give witnesses nothing till after they have deponed: and, though a party may lawfully bear his witnesses' expenses, yet here George had given some of them two dollars, which was thought exorbitant; albeit they had attended several Council days, and refused to come in without it; yet a caption could have forced them. See of witnesses' expenses, *June* 1672. *Vol. I. Page* 36.

Anent the Iniquity of Inferior Judges.

The Lords have found, that where the iniquity and partiality of an inferior judge, or clerk, is very gross and palpable, so that it looks like *dolus* or *lata culpa*, that they will sustain action, and will find such a judge or clerk liable for repayment of the sum so unjustly decerned. *Si dolo litem suam fecerit judex, tenetur parti læsæ in damnum et interesse, l. ult. de Extr. Cognit.* See Gayl. *de Arrestis Imper. c.* 14, *lib.* 1, *obs.* 153, *et lib.* 2, *obs.* 76. And I hear that the Lords lately found a sheriff liable to a debt for pronouncing an unjust decreet. *Vide tit. Dig. de Mag. Conveniendis.*

The Lords have lately permitted a pursuer to advocate his own cause upon iniquity done him. See *July* 1672, *Bell.* *Vol. I. Page* 37.

1679. *January* 25. Robert Campbell *against* Lady Cardross and her Husband.

Robert Campbell, as standing infeft in 13 oxengates of land in Strabrock, from Mr Peter Oliphant, pursues a reduction, against Lady Cardross and her Husband, of their rights of the same. Alleged,—They would not take a day in the reduction to produce, because all parties having interest were not called, *viz.* her sister, who was married to Lord Kilmawers, and was the other heir-portioner. Answered, 1*mo*,—No necessity to call her, because offered to prove, by Lady Cardross's oath, her sister was denuded in her favours, and so her interest ceased; and she was the sole heir of tailyie to her brother Sir William. 2*do*, Offered to call her to the next diet of the process, if needful.

The Lords, upon report, found, that of necessity she behoved to be called. *Vol. I. Page* 38.