

lities added be intrinsic and competent or not: Wherein the most general rule of determining is, where the party-referrer to oath picks out such parts and circumstances of the bargain, promise, agreement, or fact, as make for him, omitting the rest; in that case the party-deponer may declare the whole tenor of the affair, and what conditions and qualities were communed on, and the special terms on which he agreed, and the whole parts of the bargain; and these qualities will be intrinsic, and both necessarily and warrantably adjected: But if he confess the debt, and add,—“The pursuer owes me as much on another account,” this is extrinsic, and resolves into an exception of compensation, and must either be proved *aliunde*, or action reserved to the deponer against the pursuer for constitution and recovery of it, as accords.

*Vol. II. Page 96.*

1700. *February 29 and June 18.* GEORGE SUITY *against* ROBERT HEPBURN.

*February 29.*—GEORGE Suity against Robert Hepburn, brother to Beinston, who founded on a promise, made by the said George, to quit omissions in the tutory; and he having deponed *negativè*, Robert urged a reëxamination, because he had erred *in jure*, in not considering that the words he used,—“I am willing to give you down Elphiston’s debt,” &c. implied a promise; but thought it only a communing. *2do.* He craved allowance of a transaction he had made with Balnagoun.

ANSWERED to the *first*,—After one has denied in general, there is no more room for particulars, else perjury might be inferred. As to the *second*, Though he had an act of the Lords, yet that was no sufficient warrant to transact, these being impetrated *periculo petentis*; and so cannot defend against the minor.

The Lords repelled Robert Hepburn’s defences; whereupon he closed this winter session with an appeal to the Parliament.

*Vol. II. Page 95.*

*June 18.*—Robert Hepburn having, on the last of February 1700, entered his protestation to the Parliament against the Lords’ sentence; and being charged in the vacance thereon, he gave in a bill of suspension, which he obtained passed, on his finding sufficient caution; which he not being able to find, gives in a bill to the whole Lords, craving they would allow it to pass on juratory caution, and his consigning a disposition, in the terms of the Act of Sederunt.

It occurred to the Lords, That he having appealed to the Parliament, the cognition was devolved to them; and they could not stop execution of their own sentence, unless he renounced his appeal; or, *2do.* That he sought suspension on obedience offered; or, *3tio.* That the reasons of suspension were emergent and supervenient since the decret; and therefore the Lords recalled the suspension, and took off the sist of execution, and allowed the charger to go on in his diligence.

*Vol. II. Page 97.*