

No 11. made and received in satisfaction of other debts not proved by writ, then the quality might be reckoned intrinsic.

" THE LORDS allowed the article of 500 merks, and found, that the defender's deponing there were other debts not proved by writ, did not prove, seeing he did not also depone, that the payment was given and received, in satisfaction of these other debts."

*Fol. Dic. v. 2. p. 295. Dalrymple, No 43. p. 55.*

1705. November 27.

JAMES SINCLAIR of Southdun *against* GEORGE SINCLAIR of Barrock.

No 12.

A debtor in bonds having offered to prove payment, by the creditor's oath, and he having deponed that his wife received from the debtor a certain sum, owing to him by a third person, which the debtor promised to pay, the quality in the oath was found intrinsic, and the sum received by the wife not imputed in payment of the bonds.

In a declarator, at the instance of James Sinclair of Southdun, against George Sinclair of Barrock, for extinguishing two bonds granted to him by the pursuer's predecessor, the pursuer offered to prove payment by the defender's oath; and he having deponed, that William Bruce, brother to Stanstell, being debtor to him in L. 60, which the pursuer's father promised to pay, the deponent's wife received the same, by his order, from Southdun;

THE LORDS found the quality of the oath intrinsic, and refused to deduce the L. 60 off the sum in the bonds.

Albeit it was *alleged* for the pursuer, That the quality should be considered as extrinsic; because the defender's oath cannot prove that William Bruce was debtor to him, or fix a debt upon Bruce, nor yet can it prove that the pursuer's father promised to pay such a debt; as a creditor in a bond, by whose oath the debtor offered to prove payment, acknowledging he got payment but upon the account of merchant-ware, or other things furnished, would be obliged, notwithstanding such a quality, to instruct the furnishing and prices.

In respect it was *answered* for the defender, That the pursuer having offered to prove payment of the bonds by the defender's oath; and he having deponed that the L. 60 was received upon another account, the pursuer must take the oath as it stands; seeing, if the defender had deponed that the pursuer was owing him L. 60 per bond or ticket, which he gave up upon payment; this could not have obliged Barrock, the defender, to prove that the money was due by the said bond, or ticket; for the case is not, whether a promise could be proved by the deponent's own oath; but that, seeing he did not acknowledge to have received the money controverted, in payment of the bonds, the pursuer doth not prove his allegiance.

*Fol. Dic. v. 2. p. 295. Forbes, p. 46.*

1727. January. LAUDER *against* M'GIBBON and MEDINA.

No 13.

LAUDER insisted against M'Gibbon and Medina for payment of a certain sum, as the price of goods furnished to them, and referred all to their oaths. M'Gibbon acknowledged the receipt of some goods, but adjected this quality, that he