

his account; and the quality must also prove the payment to creditors, seeing where there is no other mean of probation against a person but his oath, he may thereby exoner himself of his acknowledgment by the circumstantiate quality of payment, 28th May 1629, Gall *contra* Eviot, *infra*, *h. t.*; 10th July 1632, Lord Fenton *contra* Drummond, No 36. p. 13228.

THE LORDS found the quality extrinsic, and that Hary Dow must instruct otherwise than by his own oath, what he paid to Wordie's Creditors.

Fol. Dic. v. 2. p. 297. Forbes, p. 211.

No 32.

1737. July 26.

JAMES MEIKLE *against* JOHN TENNENT.

THE pursuer, as having right from Richard Meikle's Executor, brought a process against the defender for payment of 300 merks, which he had borrowed from Richard; and, as no written document had been given for the money, the pursuer *insisted*, That Tennent should confess or deny whether or not he had borrowed that sum from Richard Meikle.

The defender *answered*; He denied he ever borrowed or received that money from the deceased Richard Meikle, but on the express condition of repaying the same, only in case he should ask it in his own lifetime, and not otherwise, which was the reason why he required neither bill nor bond for the same.

THE LORDS found the quality in the declaration intrinsic.

C. Home, No 71. p. 121.

No 33.

Quality in a declaration, whether intrinsic or extrinsic?

1745. February 22.

CHRYSTIES *against* CHRYSTIE.

Two brothers having agreed, by a written contract, to implement a deed of their father's, notwithstanding any nullities or informalities therein contained; the heirs of the one brother, who died, pursuing the other for implement, put it to his oath, whether he had not signed such contract? He deponed *affirmative*; but adjected, that it was under a condition not contained in the contract, that the brothers should make mutual tailzies in each other's favour; under which condition he offered to implement the agreement. THE LORDS found the quality adjected was extrinsic.

Fol. Dic. v. 4. p. 205. D. Falconer.

No 34.

*** This case is No 41. p. 8437., *voce* LOCUS POENITENTIAE.