

rester was more in his debt than the L. 50, without regard to the Lady Herbertshire's aliment for four or five years."

No 23.

The Lords found, the oath did not prove resting owing.

*Fol. Dic. v. 4. p. 204. C. Home, No 208. p. 346.*

1748. June 18.

BLAIR against BALFOUR.

No 24.

BLAIR in Errol, as creditor to Paterson of Dunmuir, having arrested in the hands of Balfour of Dunbog, and in the furthcoming the pursuer having referred to Dunbog's oath what he was resting owing to Dunmuir at the time of the arrestment, he deposed, that he was resting to him by bond the sum of L. 2932 Scots, but added several qualities, partly resolving in payments, partly in compensations, and, *inter alia*, that he had paid to John Imrie, town-clerk of Cupar, at Whitsunday 1735, the sum of L. 833 : 6 : 8d. upon a decree of furthcoming at his instance against the deponent for a debt due by Dunmuir, but which decree he did not produce.

On advising this oath, a general topic was broached from the Bench, viz. That in all cases where resting owing is referred to oath, as a general denial of resting owing would be sufficient to exoner the defender, it were wrong, that because a man has but of tenderness condescended upon the manner in which he made the satisfaction, his oath should not be held probative of every thing deponed, whether a proper payment or not. But as this was to overturn what had been so long deemed the settled principles of our law, so it could at no rate apply to this case, where the payment was deponed to be made in consequence of a decree; for unless the decree be produced, the debtor is not exoner, but might be obliged to pay over again.

Accordingly, the Lords "refused to allow this payment till the decree should be produced."

*Fol. Dic. v. 4. p. 204. Kilkerran, (OATH.) No 2. p. 359.*

1759. March. MARGARET BETT and her HUSBAND against ROBERT HARDIE.

No 25.

MARGARET ANDERSON, in a testamentary settlement, conveyed, *inter alia*, to Margaret Bett, her daughter, a bill for L. 7 Sterling, drawn by Robert Hardie upon and accepted by Trent of Pitcullo, and indorsed by Hardie to Anderson.

Payment to a third party at the desire of the pursuer, whether intrinsic?

Hardie had been often entrusted by Margaret Anderson with the custody of her writs, and care of her affairs; and, upon her death, her daughter put the said bill, with several other writs, into his hands, and some time after married David Innes.

After the marriage, Margaret Bett, and her husband, pursued an exhibition before the Sheriff of Fife against Hardie; in which, after exhibiting certain