

No 51.

1760. July 24.

BYRON *against* CRAW.

THE LORDS refused to allow the oath of calumny to be put where the pursuer was out of the country, and it appeared to be demanded only with a view of delaying the cause. See APPENDIX.

Fol. Dic. v. 4. p. 21.

DIVISION IV.

Oaths to Government.

1792. June 6.

ROBERT BANKS, and Others, *against* HENRY JAFFRAY, and Others.

No 52.
Consequences of omitting or refusing, in a proper manner, to take the oaths to Government, as an officer in a Royal Burgh.

JOHN HEWIT was chosen Deacon of the corporation of Tailors in the burgh of Stirling, in the month of September 1790; but he did not take his seat, or act in that capacity, till 27th September 1791, when the Magistrates, and other officers in the burgh, were elected for the ensuing year.

The usual oaths to Government being tendered to him, Hewit added this qualification, "That he took them, so far as was agreeable to the Word of " God."

The result of the election depending on this man's vote, a complaint was preferred, in virtue of 16th George II. for trying its validity.

Thereafter, on 24th December 1791, Hewit appeared in the Court of Session, and took and subscribed the oaths, without any reservation.

The Court unanimously found, "That the oaths had not been taken by Hewit on 27th September 1791, in the form required by law." After this, however, the question occurred, what should be the effect of the vote he had given; Henry Jaffray, and the other candidates favoured by him, insisting that the circumstances occurring at that period could not affect them. In support of this proposition, they

Pleaded, The Scots statutes of 1661, c. 11. and 1685, c. 17. though they impose certain penalties on persons refusing or delaying to take the requisite oaths to Government, do not render void what is done by them in their official capacity. And the act 1693, c. 6. declaring that such persons shall be *ipso facto*