

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

received them in consequence of an agreement for teaching the pursuer the violin; Medina also acknowledged the receipt of some goods, with this quality, that he got them in consideration of pictures he was to draw of the pursuer and his lady, that he had made ready canvasses, and was still willing to perform. THE LORDS found these qualities intrinsic.

No 13.

*Fol. Dic. v. 2. p. 296.*

1730. February. CAMERON against DUNSKINE.

No 14.

In a pursuit upon a bill, an allegiance being made for the defender of a partial payment, which was referred to the pursuer's oath; and he deponing, that he received L. 5 Sterling, but that it was in payment of a separate open account; the LORDS found the quality extrinsic, and that the partial payment behoved to be applied to the bill, unless the pursuer would instruct the open account otherwise than by his own oath, notwithstanding that the allegiance of partial payment was not proved, the oath resolving into a denial thereof.—See APPENDIX.

*Fol. Dic. v. 2. p. 295.*

1751. February 20. THOMAS PADEN against ANDREW GOVAN.

No 15.

ANDREW GOVAN, Ship-master in Borrowstounness, hired Daniel Blair for his chief mate at L. 3: 10s. Sterling, and Thomas Paden, second mate, at L. 2: 12s: 6d. per month, for a voyage from Borrowstounness to Charlestown, in Carolina; thence to Borrowstounness, and thence to Rotterdam. Daniel Blair was discharged at Charlestown.

Paden pursued for wages as chief mate, before the Admiral-substitute at Borrowstounness, where the master deponed, " That the pursuer acted as chief mate from 6th or 7th September 1747, to 23d October thereafter, signed receipts, received on board the homeward-bound cargo. And being interrogated, if or not he was resolved to have gone to sea, and sailed homeward with the complainer as chief mate, till finding the ship leaky at Rebellion road, that the said ship was brought up again to Charlestown, where the complainer delivered the cargo, and hauled the ship down to a place to heave down, to make her fit for sea again? Deponed, that he was resolved to have sailed homeward with the pursuer as chief mate; and he acted as such till the ship was carried back to Charlestown to refit; and deponed, by his promise, that the pursuer was to have Daniel Blair's wages, as mentioned in the articles of agreement in process. Deponed, That after they returned to Charlestown, the pursuer refused to act in any other station aboard of the ship than what he first agreed for as second mate; and deponed, That he hired Alexander Crichton as chief mate; and that both he and the pursuer, Paden, kept journals, and navigated the ship homewards to Borrowstounness; that the pursuer acted as mate from Borrowstounness to Rotterdam, Crichton being discharged at Borrowstounness.

A ship-master being pursued by one he had engaged as second mate, and deponed, that, during the voyage, the first mate was dismissed, and the pursuer, for some time, served in his place; and that he intended to have brought him home as such, but the pursuer himself refused, whereon he hired another. The quality was found intrinsic.