

deny the truth, least his oath should clash, or, by confession, acknowledge his perjury in his first oath; and therefore it was against charity and humanity to ensnare men, by first asking the general interrogatory, and then proponing special ones, though at the same time, much more *ex intervallo*. It is true, where a party adjects a quality, not being referred to his oath, he cannot thereby exclude the other party from expiscating the truth by special interrogatories; but it is not so when a matter is referred by the party to oath. It was *unwaxed*, That Ardblair was examined when Husband was not present, and did depone, upon the point in the act referred generally to his oath, that the cause of both bonds was the same. It was *replied*, That there was here no collusion or clandestine course, but Ardblair came publicly to the Bar and made faith; and, in the afternoon, did depone upon the act as it stood; neither are special interrogatories necessary, though the party may use them if he please, and therefore not having offered them before the oath was given, in due time, he cannot be heard thereafter.

The Lords found, that, after the party had deponed in general, either upon the act or general interrogatory, he could not thereafter be examined upon any special interrogatory, that it might infer any contradiction to his oath on the general; and did resolve to keep that method in examination, to examine first upon the special interrogatories, if any were, and last upon the general.

Fol. Dic. v. 2. p. 15. Stair, v. 2. p. 651.

* * * Fountainhall reports this case:

This was found relevant to annul a comprising, that they offered to prove, by Ardblair's oath, he had since taken a bond in satisfaction of the sum in the comprising, though the bond bore borrowed money; and he having deponed *negative*, but not having told what was the cause of the bond, the LORDS refused a bill craving a re-examination of him upon that.

Fountainhall, MS.

1702. November 10. DAVID AITKEN *against* JAMES FINLAY.

In a concluded cause, David Aitken *contra* James Finlay in Balchrystie, the pursuer had offered to prove, by the defender's oath, that he owed him 300 merks, which he had given him on his promise to repay it; as also, had intromitted with thirty sheep, the value whereof he libelled, with L. 100 as their profits since. Finlay depones, and confesses he received the money; but adds, that it was in payment and satisfaction to him of as much due to him by Aitken, and that he never promised to repay it; and as to the sheep, acknowledges he took nine ewes of the pursuer's, but it was by virtue of an order and

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A defender, to whose oath a libel had been referred, acknowledged he had received the

money, but that it was in payment of a

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sum due by
the pursuer.
The pursuer
offered to
prove, by the
defender's
oath, that he
owed him no
sum, unless
on a bargain
which never
took effect.
Found incom-
petent to re-
examine.

warrant from the Laird of Ardross, as his proportion of a militia horse, to the outputting whereof he contributed as a fraction. At advising, it was agitated among the Lords, whether the quality adjected to the oath, that what he got was in payment of a debt owing to him, was intrinsic, or if he behoved to condescend on the particular debt owing to him, and prove it.—THE LORDS did think he was not fully interrogated as he ought to have been, yet found the quality intrinsic, and would not burden him now with any further probation; but, as to the sheep, found the taking them by Ardross's order extrinsic, unless he produced it; though the summary execution for the proportions of the militia used seldom to be in writ. Then the pursuer offered yet to prove, by the defender's oath, that any ground of debt, to which he could ascribe his receiving of the money confessed, was only due upon a minute of tack betwixt them, which was never delivered, but deposited upon conditions, which never existing, the tack expired and fell.—THE LORDS considered this might involve the man in contradicting his former oath; for, if he should acknowledge the interrogatory as it is conceived, it would be plainly inconsistent with his former oath, bearing, he took it in payment and satisfaction of a debt owing him, and so might infer perjury; and being omitted, they refused now to re-examine him thereupon, and decerned; modifying the price of the nine sheep, with their bygone profits, to L. 50 Scots for all. See QUALIFIED OATH.

Fol. Dic. v. 2. p. 15. Fountainhall, v. 2. p. 159.

Oath of the debtor, if good against his creditors; see PROOF.

Oath of a wife, if good against her husband; see PROOF.

Intrinsic and extrinsic qualities; see QUALIFIED OATH.

See APPENDIX.