

1698. *January 28.* EARL AIRLY *against* SHARP.

No 9.

AN apparent heir being pursued upon the passive title of intromission with his predecessor's writs, and having declared upon oath, That he meddled with no papers, save what were his own by assignation, which his predecessor had made to him of all his personal estate; thus making himself judge of what belonged to him; and having owned his entering the closet, where all the defunct's writs were, without either the presence or warrant of a Judge; yet the LORDS assoilzied the apparent heir, and refused to divide his oath.

Fol. Dic. v. 2. p. 296. Fountainhall.

. This case is No 31. p. 9673. *voce* PASSIVE TITLE.

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

No 10.

A PURSUER having referred to the defender's oath, that he had given him a certain sum, on his promise to repay it; and the defender deponing and confessing, that he had received the money, but adding, that it was in payment and satisfaction of as much due to him by the pursuer, and that he never promised to repay it; the LORDS found the quality intrinsic; for the quality here resolved into a denial of the libel,

Fol. Dic. v. 2. p. 295. Fountainhall.

. This case is No 35. p. 9422. *voce* OATH OF PARTY.

1703. *December 18.* SINCLAIR *against* SINCLAIR of Barrock.

No 11.

SINCLAIR of Southdun being debtor in several sums of money to Sinclair of Barrock, by bond and otherwise, pursues a declarator of extinction of these debts, and produces two receipts, and libels upon an article of 500 merks received by the defender, by and attour the sums contained in these receipts, which, with other articles, he refers to oath. Barrock depones, and acknowledges the receipt of the sum of 500 merks libelled by and attour the sums contained in the two receipts, and that he gave no receipt for the 500 merks, none being sought; and adds, that Southdun was debtor to the deponent in several other sums at that time, by and attour the sums contained in the bond and tack libelled upon.

Receipt of money being acknowledged upon oath, a quality that the same was imputable to other debts, than those libelled, not sustained.

At advising, the pursuer craved allowance of the said 500 merks. It was *alleged* for Barrock, That the receipt of the money was only proved by his oath; and the same oath bears, that other sums were due to him without writ, to which other sums he imputes the said 500 merks. It was *replied*, The quality that other sums were due to the deponent without writ is extrinsic, and must be otherwise proved than by his oath; for, if he deponed, that the payment was