

1667. February 20. HELEN JOHNSTOUN *against* ROBERT JOHNSTOUN.

HELEN JOHNSTOUN *alleging*, That there was a blank bond in her brother Robert's hand, to her use, and that he promised to apply the benefit thereof to her, doth pursue the brother, either to deliver the bond, or otherwise the sums therein, and offers her to prove, by the debtor's oath, that the bond was blank in the creditor's name, when it was subscribed by him, and by witnesses above exception, that it was blank when she delivered it to the defender, and craved the defender's oath of calumny concerning the promise. The defender *alleged*, That he was not obliged to give his oath of calumny upon one point of the libel, but upon the whole.

THE LORDS found, that he was obliged to give his oath upon one point of the libel; but they found that witnesses were not receivable to prove the bond to have been blank, to infer re-delivery of the bond, or sums; and found likewise, that seeing the whole libel was only probable by his oath, he was not obliged to give his oath of calumny, but only his oath of verity, seeing he might be ensnared by denying upon his oath of calumny, which was lubrick, and of dubious interpretation, what it imported, and so might be prompted to wrong himself in his oath of verity, lest it should clash with his oath of calumny.

1667. February 21.—IN the cause betwixt Helen Johnstoun and Robert Johnstoun, her brother, it was further *alleged* for her, That the pursuit, being a matter of breach of trust, and fraud, betwixt parties so nigh as brother and sister, the same ought to be probable by witnesses above exception, and ought not to be referred to the defender's oath, because it is offered to be proved, that he did depone before the Justices of Peace in Fife, that he had never had the bond in question, and yet in this process it is judicially acknowledged in the dispute that he hath the bond, and that he received it blank from the pursuer's husband; and it is now offered to be proved by his own brother, and other witnesses, above exception, that the pursuer delivered the bond to him blank after her husband's death, which being a matter of fact, and probable by witnesses, necessarily infers that the bond was not re-delivered to her umquhile husband.

THE LORDS, before answer, ordained the witnesses *ex officio* to be examined, upon the pursuer's delivery of the bond after her husband's death.

*Stair, v. 1. p. 445. & 448.*

1667. February 23. LAIRD OF MAY *against* JOHN ROSS.

UMQUHILE Dumbaith having disposed several lands to his oye, John Ross, brother to Kilraick, the Laird of May, Dumbaith's heir-male, pursues imputation and reduction of the disposition; and insisted upon this ground, that the

No 30.

Witnesses not admitted to prove delivery of a bond blank in the creditor's name.

No 31.

Date of writ being false, found not to infer falsehood of the