

No 20. beit the common law was so that the Judge should modify, yet the same was but of the prices and estimation of the same *prout cavebat text. in prædictis legibus*; and here where there were certain special things taken away, the Judge could not make any taxation or modification of the same, otherwise than by oath of the party's self, as was practised between the Dean of Murray and the Laird of Coxton, No 9. p. 936^o., where both the quantity of jewels and writings was referred to the oath of the party. THE LORDS, after long reasoning and advising, pronounced by sentence *definitive*, he should have the quantity and quality, both of his writings and jewels, to his oath; and that they could not make any taxation therein, because he had libelled certain things *per capita*, wherein no modification of prices could be followed. *Nonnulli dominorum, &c.* that in respect *nihil verisimile fuit* that such obligations were, as they were fairly persuaded by sundry great presumptions, the contrary to be of truth, that the hail things contained in the libel should have been modified by the LORDS, and no occasion to have been given to the pursuer to have prejudged himself and tyne his soul, *quia mors peccatoribus non fuit obtanda, sed potius ut viveret et ad Dominum converteretur.*

Fol. Dic. v. 2. p. 10. Colvil, MS. p. 324.

1684. February.

DOUGAL against MURDOCH.

No 21.

ONE having got a disposition of some goods and furniture, and the disposition being borrowed up out of a process by the disponent's relict, and she pretending that it was lost, the party pursued for damages, and craved he might be allowed to prove the quantity and kinds of goods contained in the disposition, by his oath *in litem*, seeing they consisted of many particulars, which he could not otherwise prove.

THE LORDS allowed the *juramentum in litem* as to the quantities, reserving to the defender his defences competent against the deposition, and against the value and price of the goods libelled.

Fol. Dic. v. 2. p. 10. Harcarse, (OATHS.) No 740. p. 210.

No 22.

1688. February.

M'PHERSON against AUCHLOSSIN.

A trunk being proved to have been stolen, the owner was allowed *juramentum in litem*, but was not allowed to swear as to bonds and writs he alleged were in the trunk.

Fol. Dic. v. 2. p. 10. Harcarse, (OATHS.) No 744. p. 211.