

enforcing these purposes ; which Lord Arbuthnot and other heritors and tenants endeavoured to suspend, chiefly on two grounds ; first that it was not made on the third Tuesday of May, in terms of the act 5th Geo. I. ; 2dly, that they could not oblige tenants to repair roads at a distance. Answered to the first ; By the act 1669, the first Tuesday of May is the day appointed, which is not repealed but ratified by the act 5th Geo. I., and is the usual day when the roads are ordered, being commonly the day of chusing the collector. To the second, That it would be oppressive to oblige tenants to repair roads at a distance, while there were others repairing that lay nearer ; but none of the acts limited them not to call the tenants, but what lay near them, or that lay at any certain distance ; and such a limitation would be unjust and unreasonable, and in many counties render the repairing the roads impracticable. The different bills of suspension were refused by two different Ordinaries, and one by three Ordinaries ; and this day a reclaiming bill was unanimously (as I am told) refused. I was in the Outer-House.

QUALIFIED OATH.

No. 2. 1736, Feb. 18. JEAN BUDGE, &c. *against* M'KAY of Strathy.

(THIS case is expressed in the manuscript notes in the same words as in the text.)

No. 3. 1736, Dec. 3. CREDITORS OF MENIE *against* BROOMFIELD.

See Note of No. 6, *voce* ARRESTMENT.

No. 4. 1737, Jan. 18. MOFFAT *against* MOFFAT.

THE Lords found the quality in the defender's oath intrinsic, viz. that some time after the bargain of sheep, the pursuer ordered him to pay the price to the pursuer's brother-in-law. The Lords were divided, and among others, I own I thought it was extrinsic, till a decision was cited, 6th July 1711, Clerk *against* Dallas, (Dict. No. 12, p. 13,213.) which determined me.

No. 5. 1740, Jan. 29. SUTHERLAND of Forse *against* SUTHERLAND.

KINMINITY having got an indorsation from the poor woman to a bill of 350 merks, which she alleged to be in trust ; he acknowledged the getting the indorsation, but said it was a gift. The question was, Whether this was intrinsic ; and indeed if the circumstances were true, the thing seemed improbable ; at least it seemed to be too great a donative. Several of us, particularly Royston, Dun, Murkle, *et ego*, were clear that it was intrinsic ; but the President thought that when the facts set forth in the intrinsic quality seemed probable, he would believe the quality, but if the fact was improbable, he would not believe it, without further proof. This I could not agree to, or think that intrinsic or extrinsic could depend upon the Judge's opinion of the facts being probable or not,