

It is farther requisite to prove, by the receipt or discharge of him who is said to have received the money, that the mandate has been truly fulfilled; otherwise the mandant, instead of being released from his obligation, might afterwards be obliged to pay a second time. In that manner, too, though a defender is not allowed, on a reference to oath, to rear up claims of compensation in his own favour, he might do so in favour of another, and thereby, indirectly, deprive his creditor of what is owing to him.

No 27.

THE LORD ORDINARY found, "That the defender has not brought sufficient evidence of his having paid the sum of L. 11 : 14 : 8 to Lynburner, in consequence of the pursuer's order, so as to support the assertion of such payment set forth in his oath."

And, after advising a reclaiming petition for the defender, with answers for the pursuer,

THE LORDS adhered to the judgment of the Lord Ordinary.

Lord Ordinary, *Ellick.* Act. *Cullen.* Alt. *M'Cormick.* Clerk, *Sinclair.*
G. *Fol. Dic. v. 4. p. 204.* *Fac. Col. No 274. p. 422.*

1793. June.

GRANT *against* CREDITORS OF GRANT.

A MAN being sued for payment of a bill which was prescribed, and resting being referred to his oath, he swore the bill was due, but that there was a sum at granting it owing to him equal to the sum in the bill, which had been overlooked by the parties; and that, upon discovering it, the granter had agreed to cancel the bill, which he had not then in his possession. It was questioned, whether this was an intrinsic or extrinsic quality? The Court found it intrinsic, as it in fact proved the debt not to be owing. See APPENDIX.

No 28.

Fol. Dic. v. 4. p. 205.