

abrog. ad 9. 19. Inst. de iustit. Supil. n. 6. A verbal Contract, wherein there is a mutual Performance stipulated, that requires by the Nature thereof, or is agreed by the Parties, to be fulfilled in Writ, may be departed from till the Writ be signed and delivered, so long as the Matter is intire, and it is no Ground of Action tho referred to Oath of Party, because nihil actum est nisi dum quis supervit ingenium. But the Party cannot revoke such a verbal Agreement after the Matter ceased to be intire. 15 Decemb. 1675 Park is a writ thrown out of Glasgow 1 Decemb. 1674 Gordon contra Lord Othobry. Again there was found to be no Place to rescind from a verbal Agreement to take a less Sum in Satisfaction of a greater contained in a Bond 12 Decemb. 1665 Kephurn contra Hamilton of Arbiston. Because it was per- hinc liberatorium requiring no Writ. Nor yet for the same Reason was it- cas penitentiae found to have Place in a Promise to restrict an An- nuallrent to a part of the Lands affected therewith, albeit Writ would seem to be there required, viz. a Renunciation of the Annualrent upon the rest of the Lands. But in the Case of a Promise to accept of an Annualrent out of other Lands or to quit the Annualrent for the Propri- ety of a part of the Lands mentioned, there is locus penitentiae till the mutual Rights whereby the one ~~disposes~~ ^{disposes} the Property and the other the Annualrent be subscribed & Fein 1666 Ker contra Hunter and ~~partes~~ ^{partes} is Campbell Camion. Where both Parties in an Agreement to in- perfect in Writ, swear to observe and fulfill it; there is no Place to de- part from it in Respect of the Oath 15 July 1661 Campbell contra Mair. For a promissory Oath is binding, et cunctis perjurium Stewart Insuam to Drilet Double St. Promise to dispoise. Except the Promiser be not whose Oath taken to confirm his Deed is voided by our Law Act 10. 10. 12. in supra Cap.

Tit. 3.

Of written Contracts.

Some written Contracts are obligatory upon one side, as Bonds Bills of Exchange promissory Notes &c. Others are reciprocal, and obligat- ory upon both.

Sect. 1.

Written Contracts obligatory upon one Side.

A Bond is a Writ whereby the Grantor obliges himself to pay a Sum, or deliver a Thing, or perform a Deed to another. Which varies, according to the different Sorts of Creditors and Debtors, the various Causes of the Obligation the

the different subject Matter, and the Manner of Performance. For there are Bonds granted to and by single Persons or Societies, with or without Cau- tioners, Bonds gratuitous for mere Love and Favour, or for the Provision of Children, and onerous, as Bonds for borrowed Money, or for the Price of Goods, and Bonds of annual Pension, Bonds ad facta praestanda Bonds of Presentation, Bonds of Relief by principal Debtors to their Cautioners, Back Bonds by Trustees to those who conveyed Rights to them under Trust; Bonds of Fulzie Bonds of Jurisdiction &c. A Bond wherein the Grantor acknowledges himself to be resting to a Woman a certain Sum yearly, as the Annualrent of such a Sum, and obliges himself to pay the said Sum of Annualrent yearly, without mentioning a Sum to be paid, was found and without obliging himself to pay the principal Sum expressly, was found not to import an Obligation to pay the principal as owned to be due, but was found to constitute a Right of Annualrent not only to the Woman living but also perpetual to her her Heirs or Assigns 2 Feb. 1667 Downie contra Dykes. One having granted a Bond to his Sister assigning him to import her and the Heirs of her Body, which for some reason was substituted in an Annualrent payable yearly to her and her Heirs. He is assigned Redeemable upon a principal Sum offering her to after her Marriage; one she having assigned the Bond to another Brother and died unmarried. The Assignee charged the Debtor in the Bond for payment of the yearly Annualrent, and to grant presentment in the Terms of the Bond. His sus- pended upon this Reason that this being an Annualrent accessory to a prin- cipal Sum and the Principal's being no longer one by the Cedit's having died unmarried, the Annualrent must cease by her Death. In an ablate principal's collateral accession. For suspending the principal Sum till the Cedit was married imported, that she was to get the Annualrent only till that Time and the Principal as a Condition when she married. Being other- wise such a Suspension of Payment of the Principal in case she married not, would signify Nothing, for that the Debtor would rather than suffer his Land to be subject to a perpetual Annualrent, purge it by Payment of the Principal. The Lords repeated the Reason of Suspension, and found that the Cedit being Fiat of the Annualrent, the Substitutes as Heirs of Tail- - we could not quarrel her Assignation: but were obliged as representing her to warrant it. For this Annualrent is not stated as a mere Accessory, seeing Acquisition of the Principal might be discharged or become in- - effectual as it hath by the suspensive Clause, and yet the presentment of Annualrent remain a perpetual Right redeemable at the Debtor's Option 24 June 1669 Stewart of Gairnallie contra Stewart. In Redeemable Bonds payable to the Creditor therein upon Acquisition, to be made by the De- - vice