

willingly swear; tho he is not willing to be bound by that Oath, he is how-  
 ever obliged to stand to it: Because an Obligation is inseparable from an  
 Oath; and the immediate unavoidable Consequence thereof. To make such  
 an Oath binding, the obligation must be lawful and not forbidden either  
 by the Law of nature, or by the Divine Law, or even by a humane Law.  
 Thus David did better in sparing Nabal; tho he had sworn to kill him;  
 then Herod who Chopt off John the Baptists head, that he might not vio-  
 late his Oath. For he doth but add on sin to another, who to a wicked  
 Oath, joins a wicked Action; And it were folly to Chose a Double evil  
 when one might be Excused for half. Effectual Obligations may be pro-  
 duced by the accession of an Oath, which obscure and fullfill them. But  
 which Obligations that of their own nature produce no effect in Law,  
 are effectual by the interposing an Oath. As the obligation thereof may  
 be cleared by distinguishing what is Pars Judicis, the Duty of a Judge in  
 siding such a Suit, from what the party who took such an Oath is bound  
 in. Here Poli in the Court of Conscience. A Partys being under the Obligation  
 of an Oath never to quarrel a thing, ineffectual in Law, is not sufficient to  
 Authorise the Judge to sustain Action thereupon; tho the Swearer in regard  
 his Oath doth not appear, or omit to object the Nullity. Thus no Judge  
 could sustain the null deeds of minors having Curators not consenting  
 or the Bonds of Wives obliging themselves personally for debt, or a Peckham  
 of Juritancy Incurred upon. Datum legis Commisso in Significibus  
 & 1000. For standing in the ground upon a Dispro-  
 = Sition would have an effect, or any unjust  
 or unlawful action, tho not appeal or committed  
 to by the party interested, who for ever never to  
 quarrel it; because pactis privatorum non  
 derogatur juri Communi. For tho it were dispell in one  
 to contravene his own Oath, by Impruning such a Deed; yet the Judge doth  
 no wrong by refusing to sustain it, upon any essential defect or nullity. Stair  
 Inst. lib. 1 Tit 17. § 14 Verf. first. V. G. where one is drawn in to marry a  
 Roman mistaking her for another, an Oath interposed to the bargain-  
 ment would not make it subsist. Stair Ibid. Verfe there remains  
 yet where a personal bond of Borrowed money granted by a Wife  
 therein designe Spouse to such a man; being charged or pursued upon  
 the Lords ~~right~~. Justly reject such a charge or Libel as proceeding  
 upon a bond ipso Jure null; tho the grantor promised Judicially  
 upon Oath never to Quarrel it 18 Feb. 1632. Birsh contra Douglas  
 8 November 1677 Simlas contra Richardson, which could not  
 affect her husbands Goods or her own person to his prejudice  
 but only render her culpable for suspending or impruning the  
 same without regard to her Oath. This is agreeable to the Civil  
 Law. But the Canon Law allows a null Contract to be confirmed by a  
 Oath c. 2. de pact. in 6. In so far as it is not prejudicial to a third party  
 or Saluti anime. c. 28 de Jurjur. At right formal in the essential  
 tho laboring under Circumstantial defects as a deed extorted by force  
 or fear, may be supported by the Parties Promissory Oath never to  
 Quarrel it; and cannot be reduced ex capite vis & metus. Stair  
 Ibid Verfe on this ground. Multa enim que fieri non debent facta

valent. And Exceptions that may be made by one against a deed ipso  
 Jure valid; are excluded personal objections by his swearing not to  
 do it: Tho at the same time it must be owned, that if one do a deed while  
 he is under such impression of Fear as stupifies him, and hinders  
 the Exercise of his Reason, an Oath cannot confirm the deed: because  
 the deed being null in Substantia Libus, there is nothing to be confir-  
 med. The Pope assumes a power of Dispensing with or absolving from  
 such Oaths not to Quarrel deeds ipso Jure valid. Tho a Wifes personal  
 obligation for debt, which is ipso Jure nulls cannot be made effectua-  
 lly binding, by her promissory Oath never to Quarrel it: yet Dis-  
 positions and real rights or renunciations thereof granted by a wife  
 with Consent of her husband to some third party, stand good, if ratify-  
 ed by her Judicially and confirmed by an Oath: So as she can never after-  
 ward reduce the same. Styrus v. & metu. Act 84 par. 11. 9. 3. 8 July  
 1642. Grant contra Balvaird 28 June 1673 & 2 nold contra Scott  
 & gain, an Oath is the Grand Security of publick transactions between  
 different nations, tho either party was induced to make it through  
 fear. The people of Israel were challenged by the Prophets, for the breach  
 of their Oath of Subjection to the King Babylon tho a Heathen 2 Chron.  
 36. 13. Junct. Ezek. 17. 13. & seq. Jerem. 39. 2. and for not standing to what  
 they had sworn to their Servants manumitted out of mere necessity for  
 their defence: For the same reason an Oath procured by fraud or circum-  
 vention, cannot be departed from. Such was the Oath which Joshua  
 and the Princes of the Congregation of Israel made by error to the Gi-  
 beonites who deceived them pretending to come from a far Country, which  
 Oath was binding upon Israel, Joshua 9. and Saul their King was puni-  
 shed for the breach thereof. If it be objected, that the making Oaths thus  
 effectual, will open a door to force and fraud: being Motives that induce  
 people to act, will prevail with them to ratify the deed by Oath: It may  
 be answered that. In commodum non solvit argumentum. Besides  
 those who induce Persons by Fraud or Force to swear to their own  
 hurt, may be punished by the Prince. Stair. lib. 1. Tit 17 § 17 Verf. there  
 remains yet this Objection.  
 But obligations of minors confirmed by Oath are null, and the Persons Infamous  
 who made them swear. Act 19 par. 3. Ch. 2. It is much Disputed by Canonists  
 and Civilians, whether Oaths, where no right is thereby transferred to the  
 party dealt with, be only personal obliging the Swearer, ~~or his heirs~~  
~~or his heirs~~ or if they bind his heirs? But it is more  
 probable that such Oaths are only personal obliging the Swearer  
 only, and not his Heirs, who cannot be charged with the Guilt of  
 perjury or not standing to his Oath. Nor doth it make any thing to  
 the contrary, that the Israelites were punished in the days of Saul  
 for the Violation of their Predecessors Oath made to the Gibeonites,  
 because the Oath of a nation, Society or incorporation, doth not oblige  
 their Posterity or Successors in offices Heirs to the Swearer, but as  
 they are the same nation or Society, which Dyes not, Stair Ibid.  
 Verse for this reason  
 Tit 7