1632. *November* 1. KNEILLAND *against* DUKE of LENOX.

No. 30.

In suspension where the suspender has intented reduction of the decreet, and the reasons of suspension and reduction were the same, the Lords sometimes would discuss the reasons at one time, sometimes would find the letters orderly proceeded, and suspend the execution for a certain space, while the suspender in the meantime might pursue his reduction; but finding thereby that the parties were delayed, the suspender insisting in the reduction, and thereupon craving a further time to discuss the reduction, they have resolved to find the letters orderly proceeded in the suspension, and to ordain the charger to find caution for such space as the Lords think meet for discussing of the reduction; that if the suspender prevail in the reduction, the charger shall refund the sum contained *cum omni causa*.

Auchinleck MS. p. 227.

1632. *November* 28. KIRKTON *against* HOME.

No. 31.

It is the ordinary custom in suspensions, where the suspender compears, and the charger absents himself, to suspend the letters ay and while they be produced, and no further; yet where the party suspends upon a reason which he verifies by writ in absence of the charger, the Lords have suspended the charge *simpliciter*, because of the instant verification.

Spottiswood, p. 325.

1636. *March* 9. STIRLING *against* HAMILTON.

No. 32.
A reason of suspension, that the charger poinded goods in satisfaction of his decree, cannot be proved otherwise than by writ or oath of party, for reasons of suspension must be instantly ve-

Stirling of Law charging one Hamilton for payment of £.16 contained in a decreet, obtained before the Bailies of the regality of Glasgow, for the price of some corns destroyed by the defender, and eaten by his goods; and he suspending upon this reason, that the charger had poinded a cow from the suspender, for satisfaction of the same cause, contained in this sentence; which being controverted how the same should be proved, by writ, oath of party, or witnesses; the suspender alleged, it was proveable by witnesses, being a mean matter of so small importance, and for such a cause, viz. for alleged eating of corns, which, as it was proved and constituted by witnesses, so might the liberation thereof also be proved by witnesses. The Lords not the less found that reason, bearing the poinding of a cow, ought to be proved by writ, or oath of party, and not by witnesses, seeing there was once a sentence obtained therefore; and this was in a suspension also, which ought not

to have terms of probation after this manner by witnesses, which would tend to more fashrie and expenses, than the whole matter extended to.

Fol. Dic. v. 2. p. 415. Durie, p. 802.

No. 32.
rified, and cannot stop for diets to prove by witnesses.

1665. *July* 15. PATRICK URQUHART *against* THOMAS BLAIR.

No. 33.
In a suspension, a defence of payment by another co-principal, not requisite to be instantly verified, and the defender ordained to give his oath *de calumnia*.

Patrick Urquhart having charged Thomas Blair upon a bond granted by him and William Young, as co-principals, Thomas Blair suspends, and alleges, that William Young has paid the whole. It was answered, That this was not instructed, and therefore not receivable, being in a suspension. It was answered, That though in a suspension, yet a term is always granted, where it it is another man's right. It was answered, That the suspender is in hazard of breaking, and has not found a good sufficient cautioner, and therefore if he get delay, he ought to give better caution. It was answered, That he had found caution who was accepted, and he was obliged to do no more.

The Lords ordained him to make faith *de calumnia* upon the reason, but would not put him to find new caution.

Fol. Dic. v. 2. p. 415. Stair, v. 1. p. 298.

1667. *November* 6. FIFE *against* DAW.

No. 34.

In a process for an apprentice fee against the father, who was the cautioner, the apprentice's diverting and absence were referred to the father's oath. He deponed, with a quality, that the master had beaten and put away his son. The Lords found, That the quality being *super facto alieno* did resolve in an exception, which he should have proponed, and could not be proved by his own oath; and yet, though the process was a suspension, wherein there had been a litiscontestation, the Lords allowed a term to prove the said quality.

Fol. Dic. v. 2. p. 415. Dirleton.

*** This case is No. 47. p. 15239. *voce* QUALIFIED OATH.