

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.

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 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.

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*.

1667. November 6.

FIFE against DAW.

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 liti-contestation, the Lords allowed a term to prove the said quality.

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

No. 34.

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