

No 294.
signee, who
was the ce-
dent's son.

the suspender cannot be prejudged, as to the manner of probation, by the fathers oath, by which he offered him to prove, that the father was debtor in a greater sum. It was *answered*, That the cedent's oath could not be taken in prejudice of the assignee.

THE LORDS found, That in this case the reason was probable by the cedent's oath.

Fol. Dic. v. 2. p. 236. Stair, v. 1. p. 318.

1666. June 13.

JACK *against* MOWAT.

No 295.

THE LORDS found, that Jack having obtained decret, as assignee by his father, it was relevant for the debtor to allege and prove by the assignee's oath, that the assignation was without a cause onerous, and by the cedent's oath, that the debt was paid before intimation.

Stair, v. 1. p. 376.

1671. July 11.

JAMES WARDLAW *against* Mr ROBERT PETILLO.

No 296.
A brother being assigned to a bond or decree for no onerous cause, and so a donation, the Lords sustained compensation to be proved by the cedent's oath, without the necessity of reduction upon act 1621.

WARDLAW being charged at the instance of Mr Robert Petillo, as assignee constituted by George Petillo his brother, in and to the sum of 420 merks, contained in a decree-arbitral, decerned in favours of the said George; did suspend upon this reason, that he offered him to prove by the cedent's oath that he was debtor to him in as much for goods received, whereupon he gave in a condescence. It was *answered* for the charger, That the cedent's oath could not be taken to the prejudice of the assignee, for an onerous cause. It was *replied*, That they offered to prove by the assignee's oath, that his assignation was for no onerous cause, but a mere donation by one brother to another, which could not hinder compensation to be proved by the cedent's oath, as was found in a case betwixt Forbes *against* Forbes, where a bond was assigned by a father to a second son. THE LORDS did sustain the reason of suspension, and found it probable by the cedent's oath, to take away the assignation, it being but a mere donation, and that there was no necessity to reduce upon the act of Parliament, as being done *in fraudem*.

Fol. Dic. v. 2. p. 231. Gosford, MS. No. 376, p. 185.

1674. November 7.

BOYD *against* STORIE.

No 297.
A cedent's oath is not good against an onerous

JOHN BOYD late Bailie of Edinburgh, as assignee by Mr James Logan and Mary Cave his mother for sums received by them, to the duties of a tenement in Leith, and certain acres near thereto for the crop 1666, pursues Storie the