

bert Burnet, writer to the signet, of a disposition imputed from her uncle, as granted *in lecto*,—he having objected against her title, that there was a nearer heir, and she offering to prove he was abroad, and an act of litiscontestation having been extracted thereon, and witnesses examined on a commission; but the same not being yet come in by the course of the roll, she, for abridging her process, craved Robert's oath of calumny, if he could deny that he knew he was dead. It came to be a debate among the Lords, If he was obliged now to give his oath, she having neglected to crave it when he first proponed the allegiance. Some thought an oath of calumny may be sought in any part of the process, before sentence, *ad lites amputandas*. And Hope, *Prac. tit. Of Oaths of Calumny*, seems to be of this opinion; though he says *olim* it could not be sought after probation. Others argued, Having elected the manner of probation by witnesses, she could not recur to his oath of verity, if the probation be either affirmative or negative; *ergo, multo minus* seek an oath of calumny; and that it was, the last session, refused in *Fotheringham's case* against the *Earl of Home*.

The Lords looked on the case as of general importance, and desired to be fully informed before they proceeded to a decision therein.

See Dury, 15th July 1622, *Rosline*.

*Vol. I. Page 677.*

1695. November 14. MR MATTHEW CAMPBELL of WATERHAUGH *against* His CREDITORS.

MR Matthew Campbell of Waterhaugh, one of the forfeited persons in the late times, being imprisoned for the payment of some arrears of a life-rent-anuity due out of his lands, he presented a suspension and charge to be put at liberty on the *supersedere* contained in the 16th Act of Parliament 1695, suspending all personal execution against persons in his circumstances till Whitsunday 1696.

The Lords, having read the clause of that act, found it related only to debts where there was a principal sum and annualrents; and did not extend to this case, where there was no *sors*; and so, being *lex correctoria et a jure communi exorbitans*, it could not be drawn *de casu in casum*; and therefore refused the bill.

*Vol. I. Page 678.*

1695. November 19. ROBERT DOUGLASS, Younger, *against* BAILIE CUNNINGHAM and OTHERS.

IN the bill of suspension given in by Robert Douglass, younger, soap-boiler in Leith, against Bailie Cunningham and others, of a decret of the Magistrates of Edinburgh, as justices of the peace, fining him in £100 Scots for opprobrious language against the Magistrates, and particularly against the said Bailie Cunningham, and ordaining him to give bond not to defame or trouble any of the Magistrates, under the pain of £50 sterling;—and he complaining that he was refused a sight of the libel, and that he could not, by a narrative they had