

1731. February 9.

PRINGLE *against* CAMPBELL.

No 302.

THE oath of the indorser sustained against an onerous indorsee, to prove that a bill was for money won at play, and consequently void.

A cedent who has given warrandice that the whole debt is resting owing, is not allowed thereafter to depone against the assignee, that any part is paid: But in such a case as the present there is the same reason for sustaining the cedent's oath, that there is for sustaining a proof of payment by the common debtor's oath against an arrester, because, being liable in warrandice, it is virtually deponing against himself. See APPENDIX. See No 316. p. 12473.

*Fol. Dic. v. 2. p. 236.*

1733. February 15.

CAMPBELL of Barwilline *against* RELICT of Mr ALEXANDER CAMPBELL.

No 303.

IN a question about a proof of eases, though the cedent's oath who gave the ease is commonly sustained where the ease is not specified, yet where the transmission bore the precise sum paid for the right, the cedent's oath was not sustained contrary to his own writ. See APPENDIX.

*Fol. Dic. v. 2. p. 235.*

1749. July.

TELFER *against* The REPRESENTATIVES of SPENCE.

No 304.

IN an action against the Representatives of Nicol Spence, at the instance of poor David Telfer, the gratuitous assignee of Jean Nisbet, to a debt alleged due to her by Spence, the defenders offered to prove payment by Jean Nisbet the cedent's oath, for which a term was assigned. But she, an obscure person, and said to have fled the country for irregularities, not being to be found, the question was, on whom it was incumbent to produce her?

And the LORDS "found that the gratuitous assignee was bound to produce his cedent to depone. And upon his failure at the day assigned him for that effect, she was held as confessed.

*Fol. Dic. v. 4. p. 164. Kilkerran, (PROOF.) No 11. p. 446.*

On whom it lies to produce the cedent of a gratuitous assignee to depone.