

SECT. III.

What if the payment or satisfaction be of that nature not to be proveable by witnesses? Qualified declaration. A party's subscription being referred to his oath, whether he can adject the quality that his obligation is conditional, when the deed bears it to be pure? Where the terms of agreement are referred to oath, whether the quality of the endurance of the agreement, being for a limited time, is intrinsic or extrinsic?

No 29. 1665. November 15. CANT (or CAUT) against LOCH's RELICT.

IN the action pursued by Mr Walter Cant against the Relict of James Loch, No 101. p. 12029. *voce* PROCESS, the Relict, as tutrix to her son, being ordained to depone upon the charge given in by the pursuer, she refused to depone thereupon, unless she were likewise permitted to depone anent the discharge of her own intromission; and it being questioned, whether she might so depone with a quality as that by her oath she might exhaust all her intromissions or what she might have intromitted with? THE LORDS found she ought to depone simply upon the charge without any quality upon what she had received, or might have received, of the house-mail; and that having deponed, she might give in her discharge and prove the same, which the LORDS would consider.

Fol. Dic. v. 2. p. 298. Newbyth, MS. p. 39.

No 30. 1675. July 7. OLIPHANT against ———.

Oliphant desired an advocation from the town court upon these reasons, viz. *imo*, That the libel was to be proved by the defender's oath which he was to qualify; and, *2do*, That the defender was to prove a defence by the pursuer's son's oath, who was out of the country, and the town could not give a commission for taking his oath; both which reasons were thought not to be relevant, and the advocation refused, in respect all judges ought to receive oaths with intrinsic qualities, and commissions may be directed by any competent judge.

Dirleton, No 294. p. 143.