

confessed to be owing, and elided only by the said compensation; and it was found, That the deponer, by his qualified oath, might propone and swear his own exception.

No 52.

Act. Gibson.

Alt. Nicolson & Cunningham.

Clerk, Hay.

Fol. Dic. v. 2. p. 300. Durie, p. 444.

1664. December 9. LEARMONT against RUSSEL.

In a pursuit for the price of wines, the libel being referred to the defender's oath, he acknowledged the libel, but added, that the pursuer was debtor to him in a greater sum by bonds and decreets. This quality was found extrinsic, and that it must be proved by way of exception.

No 53.

Fol. Dic. v. 2. p. 293. Stair. Newbyth.

* * This case is No 1. p. 13201.

1687. November. JOHNSTON'S ASSIGNEE against ———.

In an action for debt at the instance of John Johnston's assignee, referred to the defender's oaths, they having deponed acknowledging the debt, but with this quality, that the cedent had got goods from them to the value; the LORDS found, That this quality not being liquid, did not infer and instruct the compensation; and, seeing the oath did not bear that the defender gave the cedent goods in satisfaction of the debt due to him the cedent, it did not prove payment, as it might have done, had the quality been so conceived, although the cedent was then bankrupt, and in America.

No 54.

Fol. Dic. v. 2. p. 301. Harcarse, (COMPENSATION.) No 266. p. 63.

1761. February 11. WILLIAM MITCHELL against DAVID MACKILNAY.

WILLIAM MITCHELL, in right of Andrew Maclure executor confirmed to Michael Maclure, brought a process against David Macilnay before the Bailie of Carrick in 1748, for payment of a bill dated December 13th 1733, accepted by Mackilnay, and payable to Michael Maclure, but not subscribed by Maclure as drawer, his name being only in the body of it, and the writing not holograph of him.

No 55.

A quality in an oath inferring compensation is extrinsic.

The pursuer offered to prove the acceptance of the bill by the defender's oath, and that the contents thereof were resting owing; but the defender hav-