

to Compare, which in order to hold him as Confessed, must be executed or served against him by a Messenger. If he swears affirmative that he believes such a fact to be true, or the other party swears the same by oath, he is free to dispute the same, as if his oath had not been required. If he Depone Negative, that he doth not believe the Allegation made by himself, he is to be held as Confessed for Refusing to swear; he is not otherwise to insist upon such a point. Vide supra pag. 1669.

1670-1671 But now Oaths of Calumny are of less use: Because the party against whom any fact requiring a term to prove is alleged, or his Advocate, is obliged before Judgment to swear in his Oath or Deny it, which Confession or Denial is marked in the Minutes; and upon Refusal to do so, he will be held as Confessed. If he then deny what after ward appears to have been known to him, he will be Decerned to pay without Modification all the other parties Expenses occasioned thro his Calumnious Denial. Further, the facts found on in any Extracted Decree, or in the Record, are reputed as Decided, and there is no place thereafter to object for being or feel, the want of proof. Act of Decr. 1715.

Where facts pleaded are not substantively Verified, the ordinary admits the same to proof. For some points being only probable Scripto Vel Juramento pariter, or oath of the party, as the payment of Money; some only by writ, as the necessary solemnities of writs, others probable pro ut de fine the Record of the law Vide supra pag. 1644. The proper Means of proof sometimes afford and much subject of Dispute in the outer house, of Reporting, petitioning, and hearing in the Inner house, and the Advancing of either party Oath, which Oath will be used by the other, for proving his Allegations, and Doubtless they produce them, but Oath is the assigning of terms or taking out Diligence to Recover them, which he himself hath them, he is liable to a Multi not Under 40 shillings Resting to the other party. Act of Decr. 20 November, 1711. § 17. If the Defendant to whose Oath a point is referred, was cited personally, his pro curator must take a day to prove, unless by other ways he will be held as Confessed.

if the Citation was not given to him personally, and he hath not Compared to Made Defence, he cannot be held as Confessed. In which case the pursuer must either crave a Diligence to cite him personally, or Compare, and give his Oath upon the point referred thereto at the day assigned, with Justification that if he do not, he shall be held as Confessed: Or he must crave a Term from one of these issues to be done personally. One out of Scotland may in common form be cited to give his Oath of Verity, and may be held as Confessed Upon a Citation at the Market Cross of Edinburgh, or there, and there of both, as Equivalent to a personal Citation of One within Scotland 3 July 1708. Kirkcaldy of Gilmertoun contra Forbes of Galgahon 20 June 1673. Some rule abroad, if he be Deposed. A Man whoing fled and absconded after his Creditors have cited him upon a summons executed at his dwelling place; the Creditors were allowed before Calling of the summons to warrant to enter the Refuge Ecclesiastical at the Market Cross of the Head Burgh of the shires, where he fled, and haunted, in order to hold him Confessed upon the Libel, if he failed to appear when it should happen to be called. 22 November, 1712. D. Montrose & Others contra Robt. Roy. A Woman clothed with a husband may be cited to Depone in order to affect his or any Estate she had after Dissolution of the Marriage; and a person pursued by a Man for payment of a Debt due to his wife, may prove his Depone by her Oath. Where the Libel or Reply is to be proved by the Defendants Oath, his procurator should protest for a qualified Oath, if the Circumstances of the case be such as to give it, and the other protest the contrary. Both which protestations the ordinary Oath usually admits. If the Defendant offer to prove any thing by the pursuers Oath of Verity, his procurator may take a day to produce him, or Depone without any necessity upon the Defendant to cite him for that Effect. But if the Defendant crave the pursuers Oath of Calumny, he must be cited by Virtue of a Diligence.

Ordinarily one term or Day is assigned either to the pursuer, or to the Defendant, or to both Jointly, for proving the

The words of the Act of Decree, 1715, are, "That the party against whom any fact requiring a term to prove is alleged, or his Advocate, is obliged before Judgment to swear in his Oath or Deny it, which Confession or Denial is marked in the Minutes; and upon Refusal to do so, he will be held as Confessed."