

ESK GROVE. The right is in the debtor, although the creditor have power to sell.

On the 11th March 1786, "The Lords dismissed the complaint."
Act. A. Wight. *Alt.* A. Abercrombie.

N. B.—There was some doubt arising from the case of *M'Adam*, but the circumstances of that case were not distinctly explained.

1786. *June 21.* ROBERT HAY *against* ROBERT FULTON.

QUALIFIED OATH.

In what cases payment to a third party, at the desire of the creditor, is held to be an intrinsic quality.

[*Fac. Coll. IX.* 422; *Dict.* 13,220.]

ESK GROVE. Qualities natural to the constitution and extinction of obligations are intrinsic: so payment made by the intervention of a third party is intrinsic. This case goes farther: Fulton offers to prove, in consequence of his own oath, that he voluntarily paid a sum equivalent to his debt, to the creditor of his creditor. He ought to prove, by the pursuer's oath, that he received the money.

JUSTICE-CLERK. When a man swears directly *not resting owing*, the law will believe him; but here the defender does not deny the debt; he only says that he paid the money by order of the creditor.

On the 21st June 1786, "The Lords found that Robert Fulton has not brought sufficient evidence of his having paid the sum of L. 11:14:8 to Limeburner, in consequence of the pursuer's order;" adhering to the interlocutor of Lord Elliock.

Act. R. Cullen. *Alt.* Ed. M'Cormick.

1786. *June 22.* SIR ARCHIBALD EDMONSTONE, Bart. *against* WILLIAM LANG.

WRIT.

Such cautionary obligations only valid in which the statutory solemnities have been observed.

[*Faculty Collection, IX.* 427; *Dict.* 17,057.]

BRAXFIELD. It is a settled point that a cautionary obligation is a *litera-*