

No 47.

to his tenant, whose depositions the commissioner delayed to give up to the party; he craved my Lord's oath of calumny upon the allegiance.

*Answered*; An oath of calumny *super facto proprio* is in effect an oath of verity.

THE LORDS ordained the oath of calumny to be given.

*Harcarse, (OATHS.) No 739. p. 210.*

1699. December 22.

Mr JAMES GRAHAM, Minister at Dunfermline, *against* THOMAS LOGIE, Merchant in Edinburgh.

No 48.

ON a petition given in by Mr James Graham, minister at Dunfermline, against Thomas Logie, merchant in Edinburgh, the LORDS inclined to think a party was not obliged to give his oath of calumny on an allegiance, where he had fully proven it by writ or witnesses; for such oaths are only to supply the defect of probation; but an oath of verity may be sought at any time; and Stair seems to be of this opinion, book 4. But, at last, the LORDS ordained him to give his oath of calumny on the allegiance, in regard the probation was not full.

*Fol. Dic. v. 2. p. 13. Fountainhall, v. 2. p. 75.*

1710. June 13.

The LADY CRAIGFORTH, and her Husband, *against* PATRICK MURRAY of Deuchar.

No 49.

A pursuer allowed to controvert the relevancy of a defence, after requiring and getting the defenders oath of calumny, upon the verity thereof.

IN a pursuit at the instance of the Lady Craigforth, and her husband, against Patrick Murray of Deuchar, as representing his father (who was the Lady's former husband) for payment of her jointure, the defender having craved compensation for the value of some silver-plate intromitted with by the Lady after his father's death; the pursuers were allowed to impugn the relevancy of the compensation, by *alleging*, That it was not liquid, after they had required and got the defender's oath of calumny upon the verity of the allegiance; albeit the defender *contended*, That the relevancy was not to be controverted by the pursuers, after they had homologated the same, by obliging him to depone *de calumnia*; since oaths are not to be given in vain, and even an oath of calumny is a probation *in suo genere*; and *frustra probatur, quod probatum non relevat*: For a party may crave the other's oath of calumny, which is designed to obviate the plea, without entering into the dispute of relevancy.

*Forbes, p. 408.*