

probatioun, ressavit thairupon. *Item*, Gif he has anis geven his aith upoh the libel, he may not be compellit to give the samin agane at ony time thairefter in the samin instance.

No 31.

*Fol. Dic. v. 2. p. 12. Balfour, (OATH.) No 7. p. 360.*

1558. February 28. LAIRD OF DRUMQUHASSIL *against* LAIRD OF GLENHEGIES.

No 32.

THE defender aucht and sould, quhen he is requirit be the Judge to give his aith *de calumnia*, sweir upon the hail libel, that he has just cause to deny the samin as it is intentit; and is not haldin of the law to give his aith upon everie particular heid of the samin.

*Fol. Dic. v. 2. p. 12. Balfour, (OATH.) No 5. p. 360.*

1579. February 6. CUNNINGHAM *against* The LAIRD OF KERSE.

No 33.

THERE was a process advised betwixt James Cunningham and the Laird of Kerse. The Laird of Kerse being pursued for spoliation of certain corns, the witnesses proved nothing, or very little, and the most was *deponebant hoc spolium fuisse commissum ex aliorum relocatione sed non interfuerunt facto*; and the Laird of Kerse was summoned to give his oath *de calumnia*, and was holden *pro confesso* without sufficient probation of witnesses. The question was, whether the said Laird holden *pro confesso* without sufficient probation by witnesses, was it sufficient to give *condemnator* of the spuilzie against him? The matter being disputed among the LORDS, they found, by sentence definitive, that the refusal to give his oath *de calumnia* was sufficient cause to give *condemnator*, although the matter was no otherwise proven.

*Fol. Dic. v. 2. p. 13. Colvil, MS. p. 277.*

1582. January. KER *against* KER.

THERE was a process advised betwixt Ker of Mersington, and Ker of the Shaw; at the advising of which; the same being concerning the non-entries of certain lands, and the sowing of the lands during the alleged space of the non-entries being admitted to probation, because Ker of Mersington, who was the pursuer and donatar to the non-entries, was suspected to have subtracted some of the evidents; some of the LORDS, as also the party's self, desired that he should give his oath *de calumnia*, if he had just cause to deny the having or subtracting of the evidents, and writs which was laid to his charge. It was

No 34.

An oath of calumny was ordained to be given, even after the cause was concluded, and all further probation renounced.