him that was holden *pro confesso* for not giving his oath *de calumnia*, the same was thought a sufficient probation *ad victoriam causæ*. No 44.

Auchinleck, MS. p. 150.

1629. *July* 7.

Mr James Baird, Procurator for the Laird Balquhan, *against* Laird Leslie.

A procurator, or an advocate, compelled to give his oath *de calumnia*, that he is truly informed by the party, and that he hath not devised the allegeances himself *animo deferendi litem*. No 45.

Fol. Dic. v. 2. *p.* 12. *Auchinleck, MS. p.* 151.

1629. *December* 16. Earl of Galloway *against* Maxwell.

In a reduction and improbation in one summons, as use is, the defender craving the pursuer's oath, if he had just cause to pursue improbation of the writs called for, without which he alleged he could not be compelled to produce to satisfy the reduction, seeing he was content the same should be reduced for non-production; but, if he could give his oath that he had just cause to improve, he was content that his production should remain,—the Lords found, that the pursuer could not be compelled to give his oath particularly upon that part of the summons, if he had just cause to pursue, the improbation and reduction being both in one summons, and that he ought only to give his oath *de calumnia* upon the whole summons, as it stands, if he had just cause to pursue the same. No 46.

Act. *Stuart* & *Nielson*. Alt. *Cunningham*. Clerk, *Scot*.

Fol. Dic. v. 2. *p.* 12. *Durie, p.* 475.

*** Auchinleck reports this case:

In an action of reduction and improbation, both contained in one summons, the defender craved the pursuer's oath *de calumnia*, if he had just cause both to pursue the improbation and reduction, and the pursuer was content to give his oath concerning the reduction.—The Lords ordained him to give his oath upon the whole libel, because it was found that such libels could not divide.

Auchinleck, MS. p. 151.

1683. *February*. Kilkerran *against* The Lord Bargeny. No 47.

In a pursuit at the instance of Kilkerran against the Lord Bargeny, witnesses being adduced upon commission, for proving that my Lord set lands

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 allegeance.

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 allegeance, 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 allegeance, 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 allegeance; 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.