

* * * Fountainhall reports this case :

THE Duke of Athol being pursued by a merchant in Perth, for an accompt referred to his oath, he *alleged*, by the articles of the Union, he had all the privileges due to the English Peers, whereof this was one, not to be obliged to depone, but only to declare upon their honour. This point was fully debated in the case of Arnboth against the Duke of Gordon, where it was argued, that, by the English law, they had not that method of proving by oath, as in the common law and customs of other nations; and when they give in their articles upon oath, it is no more than an oath of calumny upon the matter, that they think they have reason to believe it to be true. THE LORDS were very cautious ere they proceeded to determine this, and wrote to the Chancellor and Judges of England by the President, to get some light and directions therein; but they shunning to give any opinion in so nice and delicate a point, the LORDS found this day, that Peers were bound to depone where the oath was final and decisive of the cause, whatever they might plead in oaths of calumny or credulity, as oaths *in litem*, or on the verity of debts, or the like.

Fountainhall, v. 2. p. 564.

No 2.

1711. February 9. The EARL OF WINTON'S Case.

THE LORDS, upon report of the Lord Bowhill, found that Peers ought to give their word of honour only instead of an oath of calumny; but that they should depone in common form, where things are referred to their oaths of verity; because no probation by oaths of verity takes place in England, where a Peer's word of honour doth pass for an oath.

Fol. Dic. v. 2. p. 53. Forbes, p. 494.

No 3.

1711. December 19.

JAMES DUKE OF MONTROSE *against* M^rAULEY of Ardincaple.

IN the reduction and declarator at the instance of the Duke of Montrose against Ardincaple, about the right to the heritable bailiary of the regality of Lennox, the pursuer being cited upon an incident diligence, as haver of the defender's rights;—the LORDS found, That the Duke in this case of exhibition, ought to depone in common form; the oath demanded in an exhibition, not being an oath of calumny. In the reasoning of the LORDS upon this point, one said, that the defender in an exhibition might be held as confest for not appear-

No 4.
A peer called upon an incident diligence as a haver of writs ought to depone in common form as to the having.