

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 allegiances 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