

No 38.

1611. May 25. MONIMUSK *against* KINCUSKY.

IN an action betwixt Monimusk and Kincusky, the LORDS found, that the party's oath *de calumnia* might not be sought upon a part of the libel or exception, but upon the hail.

*Fol. Dic. v. 2. p. 12. Kerse, MS. fol. 261.*

No 39.

Found in conformity with Bulmer against Williamson, No 57. P. 9177.

1623. June 28. LO. BLANTYRE *against* TENANTS OF GLASGOW.

IN an action of spuilziation of teinds, pursued at the instance of the Lord Blantyre *contra* the Tenants of Glasgow, where the pursuer would not take the quantity of corns spuilzied to his own oath, but took him to the quantity, as it was proven by witnesses;—the LORDS found, that in this, and all the like cases, as they occurred, the pursuer shall be holden, albeit he could not be compelled to swear upon the quantity of the defender's intromission, seeing it was not in *facto proprio*, and therefore that he might prove the quantity by witnesses; yet, that the pursuer, before sentence, should be holden to give his oath *de calumnia*, or *ex credulitate*, that he believed, and was truly informed, that the quantity proven against the defenders was true, and their intromission extended to no less than what was proven; seeing it was not reasonable that pursuers should have sentence for any thing, which, by their oath, they believed not to be true, though it should be proven and decerned. This was done, albeit no defender compeared.

Act. *Lermonth.*Alt. *Absent.*Clerk, *Scot.*

*Fol. Dic. v. 2. p. 13. Durie, p. 68.*

\* \* Haddington reports this case :

THE LORDS thought fit, that when the quantity of spuilzied teinds was proven by witnesses who had ridden the teinds, that the pursuer, after he had heard what quantity was proven, should give his oath *de calumnia*, that he had just cause to crave that quantity. Farther, they thought, that the riding was not a sufficient information for the witnesses' knowledge of the quantity, if they had only ridden the teinds when they were unshorn, and had not ridden them when they were in the stouk.

*Haddington, MS. No 2874.*