what place the meal was brought; how then is it to be proved? If by witnesses from Ireland, how are they to be come at? In short, if the oath of party is not competent, the law may be repealed as useless. No doubt, there are cases where a party is not obliged to give his oath; but where the offence is not *inter crimina atrociora*, it is no uncommon thing, to oblige the party to purge himself by oath; which is a proceeding far from being against natural justice, as the person is thereby made his own judge, of which he cannot complain. And the only reason, why, in all cases, an oath cannot be administered is, lest an occasion be ministered to perjury. The law does think it hard, that a man should be convicted by oath, more than by writing; for it supposes, that it is just that offences should be discovered and punished; and therefore the temper in this matter is modelled by the law itself: And it cannot be said to be unjust, when neither life nor limb are concerned, which indeed are great temptations upon a party obliged to depone. And as to the words of the act, declaring the delinquency may be proved *prout de jure*, it means no more than a direction to judges to sustain the delinquency probable by all kinds of proofs; and such is the common acceptation in interlocutors pronounced every day; and so it has been decided, 29th January 1712, Justices of the Peace of Ayr, No 17. p. 9398. Nor is it any objection, that persons under the degree of heritors, if convicted within six months, may be transported, and that it would be flagrant to suppose the delinquency probable by their oaths; because none of the punishments in the act touch life, limb, or fame, no more than in the cases of wood-cutting, or stealing bees. And if the law has thought it necessary, that they should discover, not thoughts, but criminal facts committed by them, they cannot complain. See Lord Stair, lib. 4. tit. 44.; Faber in Cod. lib. 4. tit. 1. Defin. 43. l. 9. § 2. De jure jurando; and statute 1703, prohibiting the exportation of Irish wool.

No 19.

THE LORDS adhered.

Fol. Dic. v. 4. *p.* 22. *C. Home, No* 193. *p.* 323.

*** Kilkerran's report of this case is No 70. p. 7335, *voce* JURISDICTION.

1762. *December* 4. ARCHIBALD STIRLING of Keir, *against* JOHN CHRISTIE.

No 20.
Not relevant to prove a fact by oath of party, where penalties are concluded for.

MR STIRLING of Keir brought an action before the Justices of Peace, against John Christie, one of his tenants, for cutting some young trees on his farm, founded on the statutes of the years 1685, cap. 9. and 1698, cap. 16. and the statute of the 1st Geo. I. session 2. cap. 18. He proved that six trees, above ten years old, were cut by Christie, or those in his family, and ten by persons unknown. The Justices decerned for L. 20 Scots for each of the sixteen trees, the penalty contained in the two first of those statutes.

No 20.

Christie suspended; And, *inter alia*, *pleaded*, That he ought not to be liable in any penalty for the last ten trees, in respect it was not proved they were cut by him, or his order, or by persons in his family. Mr Stirling offered to refer to his oath, that they were cut by his order. Christie *objected*, That facts affecting a person's fame, and inferring a crime and penalties against him, cannot be referred to oath of party; for which the authorities of Stair, B. 4. T. 44; Bankton, B. 4. T. 32; and Erskine, B. 4. T. 2. § 9, were quoted.

"THE LORD ORDINARY found the allegation not relevant to be proved by the suspender's oath, in respect the charger is insisting for penalties."

"THE LORDDS adhered."

For Charger, *Walter Stewart.* For Suspender, *J. Dalrymple, Burnett.*

N. B. In this case it was debated, but not decided, Whether the tenant is liable for wood cut on his farm, unless he shall prove that the wood was cut by a third party?

J. M. *Fol. Dic. v. 4. p. 22. Fac. Col. No 99. p. 221.*

1772. *November* 13.

OSWALD CAMPBELL, *against* DOROTHEA Countess of FIFE, and Earl FIFE, Her Husband.

No 21.

In a process against a Peer, a certain point was referred to his oath. He emitted a declaration, but insisted, as a Peer, that he was not obliged to swear. After his death, the Court found, that there was no foundation for the privilege claimed as a Peer, but allowed his representatives still to prove that the declaration was true.

IN the issue of a litigation between the pursuer's predecessors and the late Earl of Caithness, the defender's father, it having been finally settled that the Earl's possession was to be ascribed to certain adjudications which he had acquired over the lands in question, the pursuer, in order to make up a charge against the Earl, and to show that his adjudications were paid, having given in a rental of the lands adjudged, stated at a specified sum, and referred the same to the Earl's oath, the LORD ORDINARY, upon the 16th July 1763, "Ordained him to depone thereupon, and granted commission for taking his oath." The commission was afterwards renewed at his request. This commission was extracted; but, instead of deponing, the Earl emitted a declaration, upon the ground, that, as a Peer, he was not obliged to swear; but which the Lord Ordinary refused to sustain, and held him as confessed upon the rental as given in by the pursuer. The Earl, in a representation, *contended*, That the declaration should be received in lieu of his oath, in respect of his being a Peer, and so not obliged to answer on oath, but only upon his word of honour; or, at least, that he should be reponed against the circumduction, and allowed a further time for deponing. THE LORD ORDINARY, on the 6th March 1764, "Before answer, as to reponing the representer against his being held as confessed, granted commission for taking his oath upon the rental, to be reported against the first sederunt day of June then next; reserving the consideration of what effect the said