

Montrose. Because the allowing such thing to be proved by
 n^o just words Endances ad Mens deventes. The Lords once
 found Extra Judicial recognitions by examining witnesses
 a civil cause, and Exhibiting signed Declarations from themselves
 they know Concerning the Matter in Controversy, a ground to asse
 the party against whom that Method was taken, as a practicing
 sequence leading to Engage precipitately the witnesses to the stand
 what they declare 14 July 1621 *Lunnington contra Galloway*
 now the Lords think other ways, and did not lay process for
 titution of some bank notes belonging to the plaintiff, and then
 warrantably introduced with by the Defendants: albeit the form
 had before Commencing the process caused examine a witness up
 oath before a Magistrate concerning what he knew about the
 Defendants having the notes, or how they came to his hand 15 Feb
 1712 *Buchanan contra Minnie* *Witnesfield* admitted in m. 21
 la prove not fully either for the pursuer or Defendant. Great Pleas
 is laid upon the cause, because the Reason of a Witness's Knowledge
 Testimonies of Witnesses produced in one process, Regularly used
 not in another, unless by the parties and his Oath be the
 same, or that other Evidence cannot be had. *Shir v. A. Feb. 4*
§ 13. The Question who are admitted to be witnesses in process, is
 handled *infra* pag. 1840 & 1841.

Seeing it often happens that he who had Occasion to prove
 a fact that is Contested, had neither writing, nor Witnesses nor
 presumptions that may be sufficient, one therefore in that case
 had Recourse to draw from the Mouth of the party a Confession
 of the truth; and that is done two ways. One is without the Aid
 Oath of an Oath, when one party summons the other and
 Requests him to own the truth of a fact, whether it be the same
 that is in dispute, or some other that may serve to prove by
 reasoning, which Vide *infra* pag. 1840, 1841. The other way of bearing the
 Confession of a party, is when he who cannot have proof of
 a fact which he alleges, refers the Matter to the oath of Oaths
 and Oath of Oaths, and Consents, that the Declaration which he shall
 Make after having been sworn shall be held for truth,
 and serve as a Deposition of the Matter in Dispute, called a
 Decisive Oath, or oath of party.

A Oath of party is either Real or presumptive. A Real
 oath is a practical Act, or Real affirmation, or Denial
 of something, Calling God to Witness the truth of it. A presu
 ptive oath is when a person Cited personally refusing to
 stand upon what is referred to by oath, is held as confessed
 on the Verity thereof, unless he can prove the contrary. Vide
infra pag. 1840 & 1841.

Real. A Real oath is Dis tinguished into an oath of Verity, and
 an oath of Credulity.
 An oath of Verity (called in the Holy Scripture an Oath for
 Confirmation, ending all Strife) is that which professes, affirms,
 what is known to be true. Such oaths Protest are obliged to take
 well as Committers, Vid. *infra* pag. 1841.

An oath of Verity is 1^o Either Necessary and Suppletory, or
 Voluntary and Decisive. A Necessary Oath of Verity is that which
 is given by the Judge to either party, upon half proof already
 Made, given in favour of himself to supply by the same 1691. *Homb.*
 1667. *Culloraes contra Chapman* &c. It is called a Necessary Oath
 because it is given at the Request of either party, the said ver
 = tary & not Consent to it, such as a Oath given by a Judge
 = ex officio in the head many cases. Thus some small articles in
 the Middle of a Cause, because being proved only by one Part
 = 2^o The Lord took the pursuer's oath in Supplement, the De
 = fendant having died shortly after taking on the account, as his
 = oath could not be taken, and the Article being very small. In
 = June 1672 *Wood contra Rollo*. One having proved that he dis
 = burged the funeral Charges of a person Deceased, his own Oath
 = in Supplement was sustained to find out the quantity and qua
 = lity of these funeral Charges, which can only be known by the
 = Defendant 25 Novem. b. 1680 *Bradford contra Hutton*. One tru
 = stust by another with Money to buy goods for him in Eng
 = land having proved that shortly after the said Commission he
 = went upon the Voyage and the Ship he was in was taken, his
 = Oath in Supplement was sustained to prove that the individual
 = Money committed to him by said Trust was taken from him: be
 = cause the person who trusted him could not Refuse his oath in
 = Supplement, and it was impossible for the Trustee to Trust
 = such other way that such Money was taken 22 June 1666
 = *Beqq contra Nicol*. But this Necessary Oath in obedience, can
 = not take place where there is already full proof, nor where
 = there is not Semiplena probatio. A Voluntary Oath, is given
 = by the one party to the other, when the former being tru
 = stust by the other, or Exception, offers to stand or fall
 = by the oath of his adversary. A Dispar Oath cannot be taken
 = against her husband, but only to affect her or her goods
 = after her death, or to work against her heirs and Executors
 = lost after her death 9 March 1627 *Her contra Lady B.*
 = 11 January 1646 *Dalton & Hodman contra Pitt*
 = cannot be taken because of a wife were allowed to swear