for the price of the horse, that quality was found Extrinsick as being in effect a new sale of the Cow which behoved to be proved: but if the cow had been accepted for the price of the horse at the same time that the horse was sold, it had been an Extrinsick quality declaring a part of the Bargain 3 Jannar. 1674 Gordon contra Cuthgin. In a process for payment of a sum the Libell being referred to the Defenders oath and he having deponed with a quality, Viz. that as he was debtor, so he had made payment partly in Money and partly in Commodities or Wares. The Lords did not sustain the oath to prove the payment because it was not special as to the quality of payment Viz. how much was paid in Money and how much in goods nor special as to the quantity of the several goods. But if it were Made special as to the Money paid by the Deponent it would be sustained pro tanto: and as to Delivery of goods in satisfaction of the Debt, it Resolved in an Exception that ought to be proved 26 June 1675 Gilchrist contra Murray. An oath of Verity cannot be Required about a fact, which if proved would infer a Crime or Infamy against the Deponent. Quia nemo tenetur jurare in suam turpitudinem, to obviate the Temptation to perjury. For it would be Contrary to Justice and to good Manners, that the Acquittal or Condemnation of the party Accused should Depend on an Oath, which Interest or passion might Influence Contrair to truth. From this Rule there are only three Exceptions that I know Viz. 1° Usury may be proved by oath of the party Receiver Act 24 Parl. 18 act 7 Parl. 16 C. 6. 2° A Simoniacal paction between a Incumbent Minister and the Patron who the former did not Reserve a sufficient Maintinance in favours to the Heir of the Benefice, may be proved by the parties oath Act 1 Parl 21 C. 6. Because of the Clandestine Nature of that Crime. 3° That a Disposition by a bankrupt was Gratuitous any time and Just cause or that the subject being again Sold, the price or most part thereof was or is to be Converted to the Bankrupts use may be proved by Writ or oath of the Reciever of the Right act 18 Parl. 23 C. 6. Again No person is obliged to swear upon the thoughts of his heart which fall not under humane Inquiry. A Sentence proceeding upon an oath of Verity doth so far Sopite and Extinguish the plea that no more is Enquired after the Giving of such an oath than Liquration 1 Dec. 1552 Dr Gurgitar. and it cannot be Reversed, even when the Swearer is in a Criminal Action found to have perjured himself, tho the Swearer

May

may be punished. An oath of Verity Extinguisheth the right of the party who Referred it to his adversaries oath and afforded action or Exception not only to the party who hath sworn but also to his Heirs and Successors Universal or Singular Ly. 1 Ly. in Fun. Dr Jurejur. That is, if it was the pursuer who Referred his Demand is Annulled both in Respect to himself, and also in Respect to those who Represent him. And if it was the Defender, he is debared from Making any Defence, and the pursuers action Remains Established and proved both against the Defender and against all those who succeed in his Room. And it would be the same thing, if the person whose oath had been desired by the contrary party being ready to swear had been Excused from it, his Adversary having Dispensed with his swearing 1 Ly. 8 1 H. Eod. If in a cause Decided by the oath of party, his wife has sworn or he had Borrowed the Matter to her Adversaries to Intermixed with others for the whole Debt, so as that any one of them alone may Discharge the whole, or be Compelled to pay the whole Debt. All the one of them only has been in Judgement, yet the oath will Cease its Effect with respect to them all, either for or against them 1. 28 pr. 8 1 3 H. Eod. But the Decision Made by the oath of a party, Respects only the parties between whom the oath has been ordained, or those whose right is in their Hands, or their Sureties, and the persons who Represent them, but it cannot hurt third persons 1. 3 1 3 1. 9 Sect. 1. 10 Dd. Jurejur. But an oath Emitted by the Defender in a process of Furth Coming, was found not to be Adjudicata as to the Assignays of the Arrestment debtor, in Respect the oath was not taken in his Defenders time: about which they appeared in the process, Compeded upon them Interposed, and opposed the Referring to the Defenders oath 5 January 1712 Elies contra Watson of Langhaun. A party absolvied upon his oath taken Condemning the tenor of a Writ, was Decerned and thereafter upon production of the Writ it self, which was not Conceived in the terms of the oath: Because that one Swears amiss about the Tenor of a Writ belonging to another, being Understood only according to the best of his Memory, doth not Import perjury, or hinder that other to Make use of the said Writ 23 Novemb. 1665 Campbell contra Doctor Beaton. Oaths of Verity are Unknown in England.

An oath of Calumniety is When the Swearer doth not assert the Verity of the Matter of fact, but only the Verity of his Belief, that the same is true. Which Oaths the Ly. May