

Client or their Agents that the points included in are true and if they think the Information given them to be true let  
 128 Part 9 J. 1. A parties oath of Calumny cannot be taken upon his own Account facts, but only upon his known facts, where the actor might have forgot out of Fear: 13 January 1692. Because an Oath upon his own Account facts, though in an oath of Obedience, seeing he cannot believe it to be true, except when it is twice first are not bound to swear Calumnia, but only to answer upon their knowledge.  
 1711 E. Wintoncase. An oath of Calumny given by one party, the prejudice of the other, doth not determine the Matter, as to hinder that other to prove other ways. Thus a witness was allowed to Contravert the Relevancy of a Deposition, after requiring and getting the Dependant oath of Calumny upon it. Verily thereof, 13 June 1710. Grayforth & her husband contra. Thus for a party may waive the Oath of Calumny (which is designed to obviate the plea) without bringing into the dispute of Relevancy. But the only effect of such an Oath of Calumny is to give liberty to the Dependant to Insist in his allegation as if his oath had not been required. Yet an Advocate depending in the soul of his Client that he was informed of the truth of what he pleaded, doth not hinder his Client to be Obed to swear to Calumnia, whether he believes it to be true. Law lib. 4 fol. 4318. For tho' it sufficeth that Pleas be believe on their Clients Information, these Clients must believe on a Swer Bottom. Offense depone that he doth not believe the allegation made by himself to be true, or be taken as Confessed for refusing to swear; he cannot thereafter Insist upon it, because such a refusal to Depone is presumed to proceed from the pursuer being Confessors of the truth thereof. Oaths of Calumny are also in England put to Common Law in the Ecclesiastical ~~Courts~~ and Court of Admiralty, whenever it is insisted only by the parties, who may either in the coming of a Cause, or at any time afterward, Demand that their adverse party may be obliged to take his oath in order to clear themselves from all suspicion of Barrying on the suit out of a spirit of Vexation and Contradiction. Clarke Praes. in Cur. Eccl. fol. 131. Praes. Cur. Dom. Ang. fol. 42. In an oath of Calumny taken at the beginning of a suit by the Plaintiff and Defend and who there advertised that it is not out of Malice or for the sake of Ravilling that they Carry on the suit, but that they stand upon their cause to be just, and well grounded, it is not in use in France, where it is thought to be a sure occasion of perjury, des Loix Civiles & Rom. part 1

Lib. 3 fol. 516. fol. 6. fol. 6. par. 2nd. In fine page 1896. 1897.

Confession is an Acknowledgment made by the principal party, that the debt or demand or allegation with which he is charged is true. Confession is either Judicial, or voluntary. Judicial Confession or that made in Prison, only accepted by any Judge, though makes sufficient proof against the Confessor in all things. It is the most pure and infallible Evidence of all others: being Witnessed may be corrupted, and words may be forged, whereas it is not. Franchinable. A Man will declare faithfully to his own prejudice if it is as stated as a sentence for the party, it is not condemned by his own Deceit. l. 1. § 28. In fine. Hence though the Maxim of Law, that in Confession in the Court parties Judicis, nisi condemnator, such Confession before the Lords of Session need not to be published: But if made before an inferior Court, it must be signed by the party, or if he cannot write, by the Judge for the absence of the Clerk or his Minute in the process not authorized with the parties Subscription, is not sufficient to found a Decree of an inferior Judge upon. Except the Defendant be taken as Confessed after he was Obed to appear to give his Oath of Verity before the Judge upon the Oath & Claim he swore to his Oath, and the term Proceedings, 17 June 1629. Clark contra Brown. This Confession is either express or tacit. Tacit Confession is the Obeding a party, as Confessed. Which is done in two Cases. 1st. A Defend or Cited personally not coming or Refusing to Depone about what is referred to his Oath is held as Confessed upon the Verity thereof upon this presumption of Law, that he will not swear because he is Confessors of the truth of what is put to him, which is a presumptive sworn Confession being quite laid. For as in the Pleas. This is agreeable to the Ordinances of France, whereby Parties are obliged to Mutual Request of each other, to answer upon oath the facts which are admitted as pertinent to the cause depending. des Loix Civiles & Rom. part 1. Lib. 3. fol. 6. Part 4. of the like practice is observed in all the Ecclesiastical Courts, and in the high Court of Admiralty of England, & is likewise praes. in Cur. Eccl. fol. 36. Praes. Cur. Dom. Ang. fol. 18. 22. But there is no such thing in the Courts of Common Law in England: because that Law allows not of Evidence by oath of party. One pursued in a forthcoming having depended that he did not remember what he was owing to the Creditor Debtor, was held as Confessed upon the pursuit. & he kept he ought to have performed himself and to have been positive in a special part of his own. For if parties were allowed in such a case to swear Non Memini, it were safe for them.