No 1. contract foresaid, the pursuer's father had disponed the title to the defender, *ut supra*, in the which there was a procuratory of resignation, albeit the king had not conferred the honour according thereto. THE LORDS found that the pursuer had no right to claim this honour, in respect her father was last possessor, and died in possession, by the acts foresaids, (there being no sasine requisite for the title thereof) and therefore seeing her father had disponed the same, as said is, she could never misken him, who behoved to be reputed as *in tenemento*, and pass to her grandsir in a higher degree, to eschew the deed of her father, whose deed she behoved to warrant, if she pursued as heir to him, or by right competent to her as nearest to him; and therefore the LORDS excluded this pursuer, as not having right to this dignity, seeing the king had not conferred the same upon her, and that her father, as said is, by the foresaid contract had renounced his right thereof; which albeit it was not found by the LORDS to be a sufficient right, to establish the honour in the person of the defender, which no subject can dispone, without the approbation of the prince, which being acquired, then the act convalesces; yet it was found enough to denude himself, and his descendants, ay and while the prince should declare his pleasure, and either confer the honour on the pursuer, or defender, at which the act will take perfection; and in the mean time, seeing the prince had not interponed himself to allow any of these acts, they found, that none of the said parties could claim the said honour, but it remained with the king, which he might confer to them he pleased: For albeit honour be not annailziable by buying and selling, yet the LORDS found, that the party having it, might quite his own interest, which albeit it would not avail him in whose favours he had done it, unless the prince should allow it, yet it was enough to denude him as said is. *See* SUCCESSION.

Act. *Nicolson.* Alt. *Stuart.* *Advocatus* for the King present.

Fol. Dic. v. 2. *p.* 53. *Durie, p.* 685.

1710. *February* 7.

JOHN BRYSSON and CLAUD. HENDERSON Merchants in Glasgow, *against* The DUKE of ATHOL.

No 2.

IN the action of forthcoming at the instance of John Brysson and Claud Henderson, against the Duke of Athol, as debtor to Jean Hardie, relict of Hugh Hardie merchant in Perth, James Hardie her brother, and John Hardie merchant in Edinburgh.

THE LORDS found, that Peers are bound to depone in common form, in cases where the libel is referred to their oath, as the only mean of probation.

Fol. Dic. v. 2. *p.* 53. *Forbes, p.* 395.

*** Fountainhall reports this case:

No 2.

THE Duke of Athol being pursued by a merchant in Perth, for an accompt referred to his oath, he *alleged*, by the articles of the Union, he had all the privileges due to the English Peers, whereof this was one, not to he obliged to depone, but only to declare upon their honour. This point was fully debated in the case of Arnbath against the Duke of Gordon, where it was argued, that, by the English law, they had not that method of proving by oath, as in the common law and customs of other nations; and when they give in their articles upon oath, it is no more than an oath of calumny upon the matter, that they think they have reason to believe it to be true. THE LORDS were very cautious ere they proceeded to determine this, and wrote to the Chancellor and Judges of England by the President, to get some light and directions therein; but they shunning to give any opinion in so nice and delicate a point, the LORDS found this day, that Peers were bound to depone where the oath was final and decisive of the cause, whatever they might plead in oaths of calumny or credulity, as oaths *in litem*, or on the verity of debts, or the like.

Fountainhall, v. 2. *p.* 564.

1711. *February* 9. The EARE of WINTON's Case.

No 3.

THE LORDS, upon report of the Lord Bowhill, found that Peers ought to give their word of honour only instead of an oath of calumny; but that they should depone in common form, where things are referred to their oaths of verity; because no probation by oaths of verity takes place in England, where a Peer's word of honour doth pass for an oath.

Fol. Dic. v. 2. *p.* 53. *Forbes, p.* 494.

1711. *December* 19.

JAMES DUKE of MONTROSE *against* M'AULEY of Ardincaple.

No 4.
A peer called upon an incident diligence as a haver of writs ought to depone in common form as to the having.

IN the reduction and declarator at the instance of the Duke of Montrose against Ardincaple, about the right to the heritable bailiary of the regality of Lennox, the pursuer being cited upon an incident diligence, as haver of the defender's rights;—the LORDS found, That the Duke in this case of exhibition, ought to depone in common form; the oath demanded in an exhibition, not being an oath of calumny. In the reasoning of the LORDS upon this point, one said, that the defender in an exhibition might be held as confest for not appear-