

S E C T. VIII.

Mala Fides induced by Process, whether it will take place from Citation, Litis-contestation, or Decree.

1619. June 2. HUNTER against L. SANQUHAR.

A TACK of teinds quarrelled by reduction, as set by a person after he was deprived, the decret was declared by the LORDS to be (to take effect) *a tempore litiscontestation*.

No 33.

Fol. Dic. v. 1. p. 111. Haddington, MS. No 1878.

1617. March 4. SEATON against SEATON.

No 34.

IN a reduction of a tack of teinds, the Lords did not give it effect, from the time of the failzie, *sed a tempore lites motæ* only.

Fol. Dic. v. 1. p. 111. Hope, MS.

* * * See This case, *voce* TEINDS.

1666. January.

LORD JUSTICE CLERK against The FEUERS of COLDINGHAME.

THE Lord Justice Clerk and his predecessors being infeft in certain lands, together with the office of forrestery within the abbacy and lordship of Coldinghame, and in certain duties yearly, namely a threave of oats out of every husband land for the office, pursues a declarator of his right against his vassals and tenants, and for payment of the duties bygone, and in time coming. It was *alleged* by some of the vassals, That they ought to be assoilzied; because they and their predecessors were infeft by the Abbots of Coldinghame, lawfully confirmed, conform to the law, in their lands, free from any such burdens; whereas any infeftments granted to the pursuer or his predecessors, were either posterior to theirs, or if prior, they were not confirmed before the defenders predecessors their infeftments were confirmed. To which the pursuer *answered*, and opposed his predecessors infeftments clad with possession, at least whereupon he and his predecessors had, from time to time, used citations, and done diligence, against the vassals, so that his right was not prescribed: And there was no necessity to say, that his predecessors were confirmed, *imo*, Because the lands and office held, of old, ward of the Abbot, and there was no necessity of confirmation in

No 35.

The Lords refused to sustain process for bygone duties payable out of the defender's lands, where the pursuer had not been in possession, but kept his process in agitation for a great number of years. It was sustained only from the last wakening.