

allege that his interest was known to the pursuer of the reduction, by intimation, or some other legal mean. He who excepted upon an infestment of lands, *cum decimis inclusis*, and many years possession by virtue thereof, cannot be elided by a reply, that the pursuer, and his predecessors and authors, have been many years in possession of the teinds controverted, by uplifting a great part of the teinds *ipsa corpora*, and receiving of payment of an yearly duty for the rest from the defender, unless he offer to prove the reply by writ or oath of party, because the Lords will not take away a valid right, clad with possession, by probation of witnesses.

In that same cause the LORDS would not admit an irrelevant allegiance, albeit the contrary party made no answer to it.

Haddington, MS. No 2955.

No 35.

1626. December 13. EARL GALLOWAY against M'CULLOCH.

A PRINCIPAL tack being reduced, the sub-tack was not found to fall in consequence, being consented to by the pursuer, who ought therefore to have called the sub-tacksman in the reduction of the principal tack.

Fol. Dic. v. 2. p. 351.

No 36.

* * This case is No 62. p. 7833. JUS TERTII.

1629. January 22. FAIRBAIRN against KELLO.

HENRY FAIRBAIRN being warded in the tolbooth of the Canongate for not payment of a sum owing to Bartholomew Kello, contained in his bond, and escaping out of ward, and sentence recovered against the Bailie thereupon for payment of the debt; thereafter the bond is desired to be reduced by Fairbairn, upon a reason of his minority; and the creditor having summoned the pursuer, he being out of the country, to give his oath *de calumnia* upon the reason, with certification; and this reduction being desired to be transferred in the cautioner for the jailor, who was decerned to relieve the Bailies; it was found that it ought to be transferred, and that the cautioner might insist thereon, even as a cautioner might transfer a suspension, though the principal would not insist thereon, who raised the same, or as a singular successor might seek transferring of that which was competent to his predecessor; and albeit the raiser of the reduction were holden as confessed, upon his oath *de calumnia*, as would grant

No 37.

A debtor who had raised reduction of his bond on minority and lesion, was held as confessed; *de calumnia*. This found not to bar his cautioner from insisting in the action.