

1686. December 11. Mr WILLIAM DUNDAS against HUGH WALLACE.

No 282.

MR WILLIAM DUNDAS, Advocate, having raised a reduction against Hugh Wallace's son, of Major Biggar's rights to him of the lands of Wolmet, as mentioned 10th November 1683, *voce* QUOD AB INITIO VITIOSUM; and the first term being run, he takes up his process, because of Melfort's favour for Hugh; whereupon Hugh Wallace gives in a bill, craving he may be ordained to re-produce it, and to insist; and *alleged* from Stair's Decisions, 6th June 1665, where Sir William Thomson was ordained to give back his process anent the clerkship, against the Town of Edinburgh, which he had thus stolen up, *voce* PUBLIC OFFICER. *Answered*, That was after debate; and Pitmedden, in Reid of Bara's case, 23d December 1685, No 280. p. 12145. was permitted to pass from his summons.—THE LORDS would not force Mr William Dundas to re-produce it.

*Fol. Dic. v. 2. p. 196. Fountainball, v. 1. p. 436.*

1693. November 25.

Mr JOHN SWINTON against Mr ARCHIBALD PRIMROSE of Dalmeny.

No 283.

IN the concluded cause, Mr John Swinton against Archibald Primrose of Dalmeny, for the tack-duty of a salt-pan set to Sir Archibald Primrose, his father, it was now *alleged*, That it is prescribed *quoad modum probandi*, not being pursued within five years after the ish of the tack, and the tenant's removal. *Answered*, This was not receivable now, after an act of litiscontestation, and probation led on it; but was a dilator that was only competent *in principio litis*. *Replied*, He proponed it *peremptorie*, and it was yet receivable, and abides no probation, being founded on a clear statute; and the intending this process being more than five years after Sir Archibald the tacksman's death. *Duplied*, It cannot be received now to the pursuer's prejudice, who (if it had been *debito tempore* proponed) would have offered to prove interruption, whereof he is now precluded. THE LORDS thought it not receivable now; for that were to engage the pursuer to a new act of litiscontestation, and to seek terms to prove interruption; and that the defender's offer to pay his expenses was not sufficient, and his mean of probation might be now perished.

When a process came to be advised, the defender recurred to a defence not formerly opponed. Not allowed, even upon paying expenses.

*Fol. Dic. v. 2. p. 199. Fountainhall, v. 1. p. 571.*

1693. December 2.

M'CORKAL against SANDERSON.

No 284.

IN sundry concluded causes, advised this day, as between M'Corkal and Sanderson, and between Blair and M'Gilchrist, against Janet Lorn and Others, the LORDS followed this method, that they received new allegeances, not proponed.

In advising a concluded cause, the Lords allowed.