

No 31.
pursuer ha-
ving done
nothing on
his right to
make inter-
ruption.

done nothing upon his right to make interruption ; and therefore the summons ought not to be sustained upon cessation and not-payment, before intimation of the pursuer's right to the defender.—Both which allegiances the Lords found relevant.

In the same case, the Lord Macdonald having proponed an allegiance, viz. That my Lord Argyle was obliged, by bond, to warrant Lochal at the hands of the defender ; and of any pursuit competent upon the said disposition, made to the defender, *et quem de evictione tenet actio, agentem repellit exceptio* : And the same being found relevant, the defender giving his oath of calumny thereupon, the LORDS, in respect the defender being in town, had refused, at least had not come to give his oath of calumny, had decerned : But the Lord Macdonald having inteded reduction of that decret, upon offer to give his oath of calumny, upon pretence, that it was towards the end of the Session, when his oath of calumny was craved ; and that upon some occasions he had been forced to go home : It was *alleged* for the Earl of Argyle, That upon Macdonald's refusal to give his oath of calumny, it was, in construction of law, a calumnious allegiance, and could not now be received ; and the greatest favour could be shown to him, was, that he should be heard to verify the same *instante*. —THE LORDS did decern, superfeeding extracting until a day in January ; that, in the mean time, the defender might verify the said allegiance, having taken his path of calumny, that the writ was not in his own hand. See OATH, of Calumny.

A&. Lockhart & Bernie.

Alt. Cuninghame & Thoirs.

Fol. Dic. v. 1. p. 109. Dirleton, No 401. p. 197.

1712. November 26.

WILLIAM DOUGLAS, Chamberlain to the Duke of Roxburgh, *against*
THOMAS CHATTO of Mainhouse.

No 32.
An adjudica-
tion, with a
decreet of
mails and
duties, against
a person, year
and day at
the horn, but
before his life-
rent escheat
was gifted,
sustained as a
title of *bona*
fide possession,
till inter-
pelled by
a decreet of
declarator.

In a process of special declarator, at the instance of William Douglas, as donatar of the life-rent escheat of Henry Main, by virtue of a gift from the Duke of Roxburgh superior, against Thomas Chatto, as possessor of some lands belonging to the rebel :—THE LORDS sustained an adjudication, with a decreet of mails and duties, obtained by the defender against the rebel, after the rebellion, but before the pursuer's gift, for a debt anterior to the rebellion, as a sufficient title of the defender's *bona fide* possession, till the same ceased by pronouncing of the decreet of general declarator of the life-rent escheat ; albeit the adjudger was neither infest, nor had charged the superior ; in respect a simple adjudication, with a decreet of mails and duties, is a sufficient title to possess and intro-mit with the rents.

Fol. Dic. v. 1. p. 109. Forbes, p. 635.

* * * The remaining Sections of this Title are in Volume V.