No 284. in the act to be proved by the party's oath. The Lords were all clear, that if he was at the Bar, the referring a relevant allegeance, though new, to his oath, was an instant verification, if they were willing to make faith, that it was *noviter veniens ad notitiam*, and not *dolose* omitted. But many of them thought it could not be received, if the party was not in the town of Edinburgh, seeing they were not obliged to attend: But the plurality carried it, that it should be admitted, and a day assigned them to come in and depone, but *cum onere maximarum expensarum* against the other party, if he denied the fact referred to his oath: And thus, in M'Corkal's case, Sanderson offered to prove by his oath, that he had homologated his decreet of poinding he had produced for eliding the spuilzie pursued against him, by threshing out the corns himself, and delivering them; but here Sanderson's allegeance was adminiculated by one witness's deposition; and, in Blair and Lorn's case, the Lords yet allowed Lorn to crave Blair's oath, whether he had right from the date of his assignation, or if, *ab initio*, the bond was for his behoof, though blank, and then filled up in M'Gilchrist's name, and assigned by him to Blair long after, to the effect it might appear, whether Blair's general discharge to Wallace, posterior to the date of the bond, but prior to the assignation, would include or comprehend the debt of this bond or not; and in the case, 25th November 1693, of Swinton and Dalmeny, No 283. p. 12147. the Lords refused this allegeance, offered to be proved by the pursuer's oath, that he neither knew nor heard of any interruption of the quinquennial prescription, seeing the pursuer was not the setter of the tack, (who was dead,) but his assignee, and so could not know whether there were interruptions or not.

A new allegeance, not proponed in the act, to be proved by the party's oath; but found it must be *cum onere impensarum*, if he deponed negative.

Fol. Dic. v. 2. p. 199. Fountainhall, v. 1. p. 574.

1693. *December* 23. Douglas *against* Cockburn.

No 285.

In the pursuit Douglas against Cockburn in Haddington, for payment of a debt contained in his father's bond, on the passive titles, referred to his oath; and one of them being as intromitter with the rents of his father's lands, he deponed he did intromit, but by a singular title, as having acquired some adjudications led against his father's estate; and he being interrogated, what he paid for these adjudications; because, by the 62d act 1661, they are declared redeemable from the apparent heir, within ten years, for the sums he paid, and so he was bound to communicate the eases he got from the adjudger; he declined to depone thereanent, in regard the pursuer was only a personal creditor, and had done no real diligence; and he was not bound, *hoc loco*, to answer that interrogatory anent the eases, it not being libelled, but they behoved to raise a new process of declarator thereon: But the Lords, on a bill and answers, found it unnecessary to multiply processes, and that it naturally occurred from his own oath, who, to shun the passive title of uplifting the mails and duties of his father's lands, did cloath himself with these adjudications; and that he ought to be re-examined, and answer that interrogatory in this same process; though formerly they used to remit them to a new one, which the LORDS thought unnecessary, and resolved to follow this method in time coming. No 285.

Fol. Dic. v. 2. p. 198. *Fountainhall, v.* 1. *p.* 583.

1696. *January* 24. EARL CASSILLIS *against* MONTGOMERY.

No 286.

A TACK of teinds being produced in a process by the defender, and the pursuer throwing in a reduction thereof *incidenter*, and the defender offering to take up his tack again; the LORDS found, that a party might take up any writ (not challenged as false) before allegeances were proponed thereon, or litiscontestation made in the cause.

Fol. Dic. v. 2. p. 197. *Fountainhall.*

*** This case is No 12. p. 33. *voce* ACCESSORIUM SEQUITUR PRINCIPALE.

1706. *February* 13.
HELENOR DAWSON and HILL, her Husband, *against* MURRAY of Spot and his CREDITORS.

No 287.
Found the reverse of Peacock against Baillie, No 269. p. 12140.

Here an exception of nullity was admitted, being instantly verified.

ARCHIBALD DOUGLAS of Spot having, 4th August 1671, disponed his estate to William Murray of Dunipace, his brother-in-law, upon his giving a back-bond of the same date for 40,000 merks, payable to the disponer and the heirs of his body; and, failing these, to be null; and, in all events, affected with the warrandice of the disposition; in the year 1699, Helenor Dawson, relict of the said Archibald Douglas, and Esquire Hill, her husband, pursued a declarator of trust and extinction of the said disposition, upon a back-bond they had right to, granted by the said William Murray to the said Archibald Douglas, dated 28th of August 1671, acknowledging his right to the estate of Spot to be only in security of L. 40,000, and that he should impute the rents exceeding the annualrent in payment of the principal sum. William Murray raised improbation of this back-bond as false and forged, and obliged the pursuers to abide by: And when they insisted in their declarator, it was *alleged* for Spot and his Creditors, That the back-bond pursued did not only lie under the violent presumptions of falsehood, but was null, and incompatible with the former back-bond, of the same date with the disposition, owned and acknowledged by Archibald Douglas's granting discharges of annualrent, conform thereto, during his lifetime, who lived long after the date of the pretended second back-bond.