

No 39.

the Bishop *alleging* that the feu could not extend to the teinds, because the teinds were not disposed by the dispositive words of the charter; and albeit in the clause of *tenendas*, the words, *cum decimis*, were casten in among the words of that clause, yet being done either negligently by the writer, or cautelously put in with other words in the common stile, and so slipped into the clause *cum aucupationibus et venationibus, &c.* and albeit the same be also insert in the *reddendo*, which bore, *reddendo pro dictis terris, molendinis et decimis*, such a particular sum, yet whatever is in any of these clauses, not being contained in the dispositive words, as the teinds are not, nor yet the mills, therefore the feu cannot extend thereto; and the excipient opposing his feu, clothed with possession past memory of man, contended that the same was sufficient to defend him in this possessory judgment, ay, and while it were reduced; specially these teinds being of the vicar's lands, which teinds were never in use to be led, but go ever with the lands and possessors thereof, and no other person ever pretended right thereto;—THE LORDS found the exception relevant, to defend the excipient in this possessory judgment, and would not annul the feu in this place upon that allegiance, in respect the *reddendo* bore clearly, The duty to be paid for the teinds, which words *pro decimis* were expressly insert in that clause of the *reddendo*. *Item*, In this process it being *alleged* for the L. Lochnivar, that he had a tack set to him by the President, being then Abbot of New Abbey, for terms yet to run; and it being *replied*, that the tack is null, as set in diminution of the rental, against the act of Parliament 1581, seeing it was set for conversion of victual into silver, at a small price; THE LORDS found this nullity ought not to be received by way of exception, but ought to abide reduction; wherein it behoved to be libelled, that the teinds paid victual of old to the titular, and were so rentalled, against which the defender would be heard, and would have time to come instructed to defend himself, which in this place cannot be done.

Act. Nisbet.

Alt. Gilmore et M^cGill.

Clerk, Gibson.

Fol. Dic. v. 1. p. 172. Durie, p. 814.

 S E C T. IX.

Objections against the Executions of Messengers, how Proponable.

1581. February.

KING'S ADVOCATE and LADY KILSYTH *against* LAIRD of WEDDERBURN.

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Found that
no allegiance

THE King's Advocate and the Lady Kilsyth persewed the L. of Wedderburu and John Hour of Cranston, for the deforcing of ane officer. It was *alleged* be

the L. of Wedderburn, That the officer of arms was not deforced, be reason that he offered him to prove that the goods, after the alleged away-taking of them frae the officer, were delivered to the Lady again be her own consent, and she content thairwith. To the which it was *answered*, it was contrare to the execution of the officer of arms; and the LORDS fand, that they wald admit na allegiance contrare to the execution of an officer, except they wald take to improve the same.

Fol. Dic. v. 1. p. 173. Colvill, MS. p. 130.

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plainly contrary to the execution of a messenger at arms, can be admitted, unless the party offer to improve the execution.

1667. June 4.

ZINZIAN against KINLOCH.

ZINZIAN, having poinded, pursued a spuilzie against Kinloch, having medled with some of the poinded goods: The time of the advising the cause, the defender offered to improve the poinding *in data*. THE LORDS repelled the defence *in hoc statu*, reserving action; in respect the poinding was produced *ab initio*; notwithstanding it was *alleged*, that the defence was *noviter veniens ad notitiam*; which the LORDS did not respect; because the poinding being produced *ab initio* (as said is), the defender should have tried and might have had the same information which he has now of the same. In the same process, though the prices of the goods spuilzied were not proven, because it is to be presumed that the prices contained in poindings are not too high, and the LORDS having considered the poinding, found the prices low.

Clerk, *Haystoun*.

Fol. Dic. v. 1. p. 173. Dirleton, No 73. p. 30.

No 41.
An offer to improve a poinding *in data* repelled; and action reserved.

SECT. X.

Improbation how Proponable.

1614. December 21. MONTEITH against CARMICHAEL.

In an action betwixt Robert Monteith and William Carmichael, the LORDS sustained a decreet-arbitral, which was pronounced *in ipso termino* upon the day betwixt and the which the decreet should have been pronounced; and, in the same cause, the LORDS would not hear the said Robert Monteith to improve, by way of suspension, albeit he offered to improve the same by the oaths of the Judges, who were both present.

Fol. Dic. v. 1. p. 173. Kerse, MS. Fol. 180.

No 42.
The Lords refused to hear a party propone improbation of a decree-arbitral by way of suspension, though he offered to improve it by the oaths of the Judges, who were both present.