*February* 3. JAMES MONTGOMERY *against* Earl of CASSILIS, &c.

No 23.
The value of lands proved by a titular of teinds in a former action, found not to be proof in a subsequent action at the instance of a party suing to have his teinds valued.

JAMES MONTGOMERY of Lenshaw, clerk to the criminal court, having right to the teinds of the lands of Kirkmichael belonging to the Earl of Cassilis, he pursues him and my Lord Ruglen, his tutor, for payment; and to liquidate the quantity, he repeats a probation led of the value of these lands some years ago by my Lord Ruglen in another process, where the rental being proved, he craves the fifth part, conform to the stock there proved. *Answered*, No regard to that probation, because it was only adduced in a process of sale pursued by the Earl and his tutor, to get liberty to sell off some lands for payment of the debts, in which there was only a general view given of the estate, that, by comparing it with the debt, the necessity of selling off a part might appear; so the probation of the rental was far from exact; 2*do*, This being led many years ago, the state of the fortune is much altered, for they have been forced to give down several chalders of victual of what it paid formerly, otherwise the tenants would have deserted it. And so that probation being far above the present rent, can never be a just or true rule; 3*tio*, It is against all form to repeat a probation from one process to another; for it is res inter alios acta quoad them, et deducta in uno judicio regulariter non probant in alio; especially, if it be in such things as per cursum temporis mutationem recipere possunt; as in rents of lands, which rise or fall in a few years space; 16th July 1628, Finlayson *contra* Lookup, No 7. p. 14024.; 25th January 1632, Kaidislie *contra* Lauder, No 12. p. 14027.; 16th July 1629, Murray, No 58. p. 9707. THE LORDS refused to take in that probation here, but left him to prove the value of the teind as he thought fit, though the other way would have saved Lenshaw both a great deal of money and time.

*Fol. Dic. v.* 2. *p.* 348. *Fountainhall, v.* 2. *p.* 633.

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1712. *Janunry* 5.

No 24.
An oath emitted by the defender in a process of forthcoming, found not to be *res jurata* as to the assignees of the arrester's debtor, in respect the oath was not taken *iis deferentibus*, although they

MARGARET, ELIZABETH, ANNA, and ISOBEL ELIES, Daughters to the deceased Mr James Elies of Stenhousemills, *against* JAMES WATSON of Saughton and his CURATORS.

THE deceased Watson of Saughton having deponed in a furthcoming against him, at the instance of Mr Robert Blackwood, as executor-creditor to the deceased Mr James Elies, that oath was, in a count and reckoning at the instance of Margaret, Elizabeth, Anna, and Isobel Elies, (assigned by Mr James their father to what Saughton owed him) against James Watson his son and heir, found not to be *res jurata* as to the pursuer; in respect the oath was not emitted *iis deferentibus*; albeit they compeared in Blackwood's process, competed upon