SECT. VIII.

In Possessory Actions, Replies against the Defender's Right are reserved till Reduction.—Objections against Rights Granted by Ecclesiastics how Proponable.

1623. *December* 11. CUNNINGHAM *against* AUSTIN.

No 38.
In a removing this exception was found relevant, that the party was infeft upon a comprising; and the Lords refused to oblige the defender to produce the comprising, to dispute its sufficiency *hoc loco*, tho' it was alleged to be led for an heritable sum, not made moveable by requisition or otherwise.

IN an action of removing betwixt Cunningham and Austin, THE LORDS found an exception relevant, founded upon an heritable infeftment granted to the excipient of the lands libelled, proceeding upon a comprising; and would not astrict the defender to produce the comprising to dispute thereupon in this judgment of removing; but found the exception, bearing the defender to be heritably infeft, relevant; albeit it was *replied* by the pursuer, that the comprising, which is the ground of the infeftment, will appear null, if the same were produced, seeing it is deduced upon an heritable bond, never made moveable by requisition or any preceding charge, whereas the comprising could not be deduced, except the sum had been first made moveable: Which reply the LORDS would not discuss in that place, nor urge the defender to produce the comprising.

Act. *Cunningham*. Alt. *Russel*. Clerk, ———.

Fol. Dic. v. 1. *p.* 173. *Durie, p.* 90.

1636. *July* 13. The BISHOP of EDINBURGH *against* BROWN.

No 39.
In a spuilzie of teinds, the defender excepted upon a current tack from an abbot. It was replied, that the tack is null, as set in diminution of the rental, against the act 1581. The Lords found, that this ought to abide reduction, and was not competent by way of exception.

THE Bishop of Edinburgh pursuing spuilzie against Gilbert Brown, and another defender, for the several teinds of their lands, and the said Gilbert Brown *alleging* a tack set to him by Mr Gilbert Gordon of Shirms, as abbot of New Abbey, by virtue whereof he had been in possession these 40 years bygone, for payment of his tack-duty allenarly; and the Bishop *replying*, that the tack could not defend him, except he should allege that the setter was lawfully provided to the abbacy. THE LORDS found the allegeance relevant to defend the excipient in this judgment possessor, without prejudice to reduce thereon *prout de jure;* seeing it was not probable, that the tacksman could have the setter's provisions in his hands and keeping; but whensoever he should be pursued therefor, for anulling of his tack in an ordinary pursuit, he might then do his diligence to recover that provision, after what legal manner he best might, and upon his own peril. And sicklike it being *alleged* for another defender, that he had a feu-infeftment from another lawful titular of his lands, *cum decimis inclusis*, by virtue whereof he and his predecessors have been, past memory of man, in peaceable immemorial possession of these teinds, for payment of the duty contained in his feu; and produced his feu to prove the same; against which