

1666. February 15. LYON of Muiresk *against* GORDON and Others.

JOHN LYON of Muiresk having obtained decret of spuilzie of certain goods, against Gordon and others, they suspend and allege the act of indemnity, that they took these goods, being under the command of the Marquis of Huntly. It was *answered*, That the charger was in friendship with the Marquis, and on his side, and so they cannot clothe themselves with the act of indemnity, as done upon hostility. *2dly*, The act indemnifies only deeds done by command, and warrant of any pretended authority; but here no such order is alleged. It was *replied*, That orders were not given in writ, and if none get the benefit of the indemnity but those who can shew or prove orders, few or none will enjoy it; nor need the suspenders to dispute whose side the charger was on, seeing they acted by order.

THE LORDS found, That it was sufficient to allege that the charger was, the time of the intromission, actually in arms, and acted it with a party, being then in arms, but needed not prove their order, or the application of the goods to public use; but found it relevant, if it were offered to be proved by the suspender's oath, that they had no warrant, or order, or *prout de jure*, that they applied them to their own private use, not for any public use.

Fol. Dic. v. 2. p. 160. Stair, v. 1. p. 356.

No 283.

Found in conformity with Fairquharson against Gardiner, *supra*.

DIVISION XI.

Possession, how presumed, and what presumed from it.

SECT. I.

Whether the Proprietor is presumed to have uplifted the Teinds.

1684. February 6. Colonel WHITEFORD *against* Earl of KILMARNOCK.

COLONEL Whiteford, having right under the Privy Seal to some teinds and feu-duties of the subdeanry of Glasgow, from the year 1585 to the year 1629, pursued my Lord Kilmarnock for his teinds and feu-duties of these inter-

No 284.