

No 2. did not determine, this pack of lint being within the value ; but it seems agreeable to the civil law and sound reason, that they should be liable as effectually for the master of the ship's fault, as he himself is liable, without all question ; and there is *par ratio*, where *exercitores per se vel alium exercent*, the skipper being but in effect a servant, and oftentimes of no fortune.

Gosford, MS. No 538. p. 285.

1734. December 21. CAMPBELL against M'LAREN.

No 3.

SOME goods having been alleged stolen out of lock-fast places in a country house, the master's oath *in litem* was sustained as a proof of the quantities and values, against the servant to whom the key of the outer door was entrusted, and who was not alleged to have any accession to the theft, but who was found liable, upon this single circumstance, that he had been *versans in illicito* in lodging a travelling packman one night in his master's house ; though the packman was not the thief, and the goods must have been stolen some time thereafter. It was *argued* for the servant, That the oath *in litem* can only be admitted where it is *aliunde* certain a theft is committed ; and supposing this proved, can only be admitted against the person who has been principal or accessory to the theft ; and yet here there is no other proof, save the pursuer's oath, that any theft was committed at all, neither is the defender alleged to be accessory ; and the circumstance of lodging the travelling packman, when no damage happened, cannot be qualified more penal than neglect ; which was repelled, in respect it was *answered*, That supposing the servant liable, there scarcely can be any other proof, in the nature of the thing, than the master's oath.—See Stair, L. 4. T. 44. § 4. See APPENDIX.

Fol. Dic. v. 2. p. 9.

* * * See No 8. p. 1817.

S E C T. II.

Where there is *probabilis ignorantia*.

1662. December 18. LORD BALMERINO against The TOWN of EDINBURGH.

No 4.
Spuilzie of
teinds was not
allowed to be
proved by

THE Lord Balmerino pursues the Town of Edinburgh, for spoilation of the teinds of the acres of Restalrig, whereof the Town's Hospital had a tack ; which being expired, inhibition was used yearly, for several years. The defender *al-*