

contrary is found, it is only in this sense, that the duty of a year's tack may be proved by witnesses, when the tacksman enters to possession.

No 230.

*Fol. Dic. v. 2. p. 231. Fountainball, MS.*

\* \* A similar decision was pronounced, 26th November 1628, Bruce against Bruce, No 7. p. 3610, *voce EJECTION.*

1687. July.

A. against B.

No 231.

THIS allegiance, that the defender having heard a merchant-count, under L. 100, read over to him, did acknowledge the whole to be right and true, was found probable by witnesses, to exoner the pursuer from proving the delivery of the goods.

*Fol. Dic. v. 2. p. 230. Harcarst, (PROBATION.) No 80. p. 225.*

1696. February 26. MR MATTHEW COUPAR against EARL of ROXBURGH.

THE LORDS advised the cause between Mr Matthew Coupar, late minister at Lilliesleaff, *alias* Lilsly, against the Earl of Roxburgh, patron of the said church, for his stipend, who gave him an allocation on sundry broken tenants, and in very small parcels. *Alleged*, He was not bound to accept it, because, by the law of this kingdom, stipends are a burden affecting the teinds, and if it be not localled, the minister may betake himself to the heritor intromitting, or any possessor he pleases, as far as their teind will reach; as was found the 3d of December 1664, Earl of Cassillis against Hutchison, *voce* STIPEND. THE LORDS found, where ministers pursued before the commission for plantation of kirks for a locality, there the patron might make an allocation; but in this process before the Session it was not receivable; but the minister might distress any to the value of their teinds, ay till his stipend were settled. See STIPEND.

No 232.  
Found, that the declaration of a patron's chamberlain was not probative against his constituent of the yearly quantity of stipend; neither could it be proved by witnesses.

1697. July 2.—MERSINGTON reported Mr Matthew Coupar, late minister at Lilliesleaff, *alias* Lilsley, and Sir John Riddle his assignee, against the Earl of Roxburgh and his Curators. The pursuit was for several years' stipend he had served the cure at that kirk. The defence was, *1mo*, Whereas he libelled 1200 merks yearly, they denied that to be the true quota of the stipend; *2do*, He claimed the whole year 1694, whereas he deserted them at the Whitsunday, and so can have right to no more but the first half of that year. *Answered to the first*, He proved the yearly stipend to be 1200 merks, by a declaration under my Lord Roxburgh's chamberlain's hand, acknowledging the same; and, if need be, offers to prove it by the oath of the last incumbent, and present minister; and for the *second*, *Esto* it were true, non-residence is the ground of a church-censure, but does not take away his right to the stipend till he be deprived; and wherever the *animus possidendi* appears, it can never be held *pro*