

own oath, who, to shun the passive title of uplifting the mails and duties of his father's lands, did cloath himself with these adjudications; and that he ought to be re-examined, and answer that interrogatory in this same process; though formerly they used to remit them to a new one, which the LORDS thought unnecessary, and resolved to follow this method in time coming.

No 285.

Fol. Dic. v. 2. p. 198. Fountainhall, v. 1. p. 583.

1696. *January 24.*EARL CASSILLIS *against* MONTGOMERY.

No 286.

A TACK of teinds being produced in a process by the defender, and the pursuer throwing in a reduction thereof *incidenter*, and the defender offering to take up his tack again; the LORDS found, that a party might take up any writ (not challenged as false) before allegiances were proponed thereon, or litiscontestation made in the cause.

Fol. Dic. v. 2. p. 197. Fountainhall.

* * This case is No 12. p. 33. *voce* ACCESSORIUM SEQUITUR PRINCIPALE.

1706. *February 13.*HELENOR DAWSON and HILL, her Husband, *against* MURRAY of Spot and his CREDITORS.

No 287.

ARCHIBALD DOUGLAS of Spot having, 4th August 1671, disposed his estate to William Murray of Dunipace, his brother-in-law, upon his giving a back-bond of the same date for 40,000 merks, payable to the disponent and the heirs of his body; and, failing these, to be null; and, in all events, affected with the warrantice of the disposition; in the year 1699, Helenor Dawson, relict of the said Archibald Douglas, and Esquire Hill, her husband, pursued a declarator of trust and extinction of the said disposition, upon a back-bond they had right to, granted by the said William Murray to the said Archibald Douglas, dated 28th of August 1671, acknowledging his right to the estate of Spot to be only in security of L. 40,000, and that he should impute the rents exceeding the annualrent in payment of the principal sum. William Murray raised improbation of this back-bond as false and forged, and obliged the pursuers to abide by: And when they insisted in their declarator, it was *alleged* for Spot and his Creditors, That the back-bond pursued did not only lie under the violent presumptions of falsehood, but was null, and incompatible with the former back-bond, of the same date with the disposition, owned and acknowledged by Archibald Douglas's granting discharges of annualrent, conform thereto, during his lifetime, who lived long after the date of the pretended second back-bond.

Found the reverse of Peacock against Baillie, No 269. p. 12140.

Here an exception of nullity was admitted, being instantly verified.