

## S E C T. II.

Whether a Party may be required to depone *super facto alieno*?—Whether Oath of Party must be special?

1665. January 5. ALEXANDER DUNBAR against ISOBEL RUTHVEN.

IN a case pursued by Alexander Dunbar Bailie of Inverness against Isobel Ruthven, wherein a trust of some goods and moveables standing in her father's possession was referred to her oath, and it being *alleged* that it was *factum alienum*, and she could not depone; the LORDS found she ought to depone, it being libelled that the trust was consistent with her knowledge.

No 23.

*Fol. Dic. v. 2. p. 15. Newbyth, MS. p. 15.*

1679. December 12.

INHABITANTS of KIRKCALDY against SIR ANDREW RAMSAY.

SIR ANDREW RAMSAY having pursued the Inhabitants of Kirkcaldy for abstracted multures, for above twenty years, the quantities being referred to their oath, they depone that they abstracted none, but brought all to the mill, as they were obliged, but refused to depone upon this interrogatory, whether they had paid the multure now found due for all that they had, because it was to be presumed, that they would not go from the mill until they paid, and that Sir Andrew having set his mill to a tenant, they were only liable to him, and that it was not reasonable to put them to depone, that they had not paid such a small duty for so long a time, which may give occasion to many such processes.

No 24.

THE LORDS ordained them to depone, whether they knew what they were resting of the multures, and what the quantity thereof was, but would not put them to the necessity to depone that all was paid after so long a time.

*Fol. Dic. v. 2. p. 15. Stair, v. 2. p. 722.*

\* \* Fountainhall reports this case. The first part of his report regards the subject of thirlage, and is referred to under that title.

1678. July 18.—IN the action pursued by Sir Andrew Ramsay Lord Abbotshall against the Town of Kirkcaldy, and feuars of the adjacent acres, the LORDS, 26th February last, found that the said heritors behoved to pay multure for their *grana crescentia* on these acres, notwithstanding that they brought the said grain into the town of Kirkcaldy, and it was grinded there. Against