

## SECT. XIII.

## Laws, Customs, &amp;c.

No 242. 1542. July 9. FINLASON *against* The Laird of KEIR.

IN action of removing, gif ony temporal man's tenent alledge he sould not be removit, because it is the consuetude within the landis and baronie quhair he dwellis, that, the takisman beand deceist, his bairnis sould not be removit, thay payand to the Lord of the ground ilk five zeiris thair gressum, the samin consuetude, and all uther consuetudis of the tenentis richt in bruiking and joising of landis, may not be provin be witnessis, bot be writ in temporal men's causis; bot in kirk landis, and spiritual men's actiounis, ony sic consuetude may be provin be witnessis.

*Fol. Dic. v. 2. p. 232. Balfour, (OF PROBATION BY WRIT.) No 20. p. 366.*

\* \* Sinclair reports this case :

*Quidam ut reor* Thomas Keir in Salton would have proved, That by the consuetude of the barony of Salton, the Lord might not put out the bairns of them that are the tacksmen during the years of the said tacks; and that of the said consuetude, the tenants and their bairns may not be removed, they paying ilk year their grassum. THE LORDS by interlocutor decerned the consuetude to be proved by writ, and not by witnesses in temporal mens causes; albeit, in kirklands are consuetudes proved de practica per testes, as was lately done in causa cujusdam mulieris contra abbatum de Kilwinning. In this same cause, John Finlayson was actor against Thomas Keir.

*Sinclair, MS. p. 30.*

No 423. 1566. January 21. Lady EDMONSTON *against* THOMAS EDMONSTON.

IN a removing pursued by the Lady Edmonston against Thomas Edmonston, to remove from the lands of Edenham, he *alleged*, That he was rentalled therein, and none could be removed that was rentalled in Edenham, except for common theft and breaking of the border laws; which custom of the barony was admitted by the Lords to be proved by the defender by witnesses; because they thought it probable only that way, it being *lex non scripta*, and next, the rental was a part of the exception, which was in writ, so that the liferent tack was not proved only by witnesses, which was that which the pursuer objected against the pursuer, viz. that the defender might make up a liferent tack to