

No 636.

had action therefor, and might prove the same, otherways than by writ or oath of party, notwithstanding of that act of Parliament.

Clerk, *Scot.**Durie, p. 260.*1628. *July 11.*ARBUTHNOT *against* LIGHTON.

No 637.

What proof,  
whether land  
had been let  
stock and  
teind.

IN a spuilzie, Arbuthnot of Findourie against Lighton, the LORDS sustained the action, (the same being restricted by the pursuer to wrongous intromission against the defender, who was convened therefor,) in respect he had uplifted from the tenants, possessors of the lands, a certain duty, both for stock and teind of the corns of that crop, for which the action was pursued; which receipt of that year they found sufficient to make him answerable for the true avail of the teinds of that year; albeit it was not libelled, that he had set the lands so for stock and teind, any other year before the year libelled, but one year allenarly; and albeit it was *replied*, That the defender's author, who was heritor of the lands the years preceding this year libelled, had been in use to set the same to tenants, for a duty promiscuously paid for stock and teind, which was probable by witnesses; albeit the defender *contended*, That it ought only to be proved by writ, or by his oath; and that the pursuer ought to prove, that the land were in use so to be set the years preceding the year controverted; which was repelled.

Act. *Gibson.*Alt. *Mowat.*Clerk, *Gibson.**Durie, p. 386.*1630. *January 29.*LAURIE *against* KEIR.

No 638.

IN a reduction of a decret, recovered before the Town of Stirling, by Laurie *contra* Keir, whereby Keir was decerned to subscribe a contract, conform to a verbal paction, whereby Laurie set to him some acres of land for seven years, for payment of the duty convened on, and according whereto Keir had possessed the lands a year, the reason of reduction was, because it was found proved by witnesses, albeit such pactions could not be proved but by writ or oath of party; which reason was found relevant, and the reducer's oath ordained to be taken, and the decret reduced; albeit also the party reducer was holden as confessed by his oath *de calumnia* in that process, and the decret bore the same.

*Durie, p. 487.*