

2do, The command to keep, is only relevant to be proved, *scripto vel juramento*, and the emission of words without any fact is not otherwise probable.

No 209.

THE LORDS found the defence and duply relevant to elide the summons, but found the reply and triply relevant to elide the same; and found it probable by witnesses, in respect it was a part of the bargain betwixt the pursuer and the stabler.

*Stair, v. I. p. 431.*

1668. July 21. ROBERT THOMSON *against* Earl of GLENCAIRN.

ROBERT THOMSON having pursued the Earl of Glencairn for a count of wright work, wherein he was employed by the late Earl for his lodging and yards, when he dwelt in my Lord Oxford's house; it was *alleged* for the Earl, That the employment being a direction was only probable *scripto vel juramento*.

No 210.

Witnesses admitted to prove that a tradesman was employed by a person deceased.

THE LORDS, before answer, having ordained witnesses to be examined, and their testimonies being clear and pregnant, that the late Earl did employ the pursuer in this work, and called for him frequently, and ordered the work from time to time, they sustained the witnesses in the probation, and found it proved. It did not appear that this pursuit was within three years of the work, but the defender did not insist in any defence thereupon.

*Fol. Dic. v. 2. p. 228. Stair, v. I. p. 555.*

1671. June 22. Duke of BUCCLEUGH *against* PARISHIONERS OF HASSENDEIN.

THE MINISTER of Hassendein having obtained the designation of a glebe out of the Duke's land, who *alleged*, That the Minister having a glebe before, extending at least to two acres, the Earl upon this designation had gotten possession thereof, and could only seek relief for the surplus. It was *answered*, That these two acres had never been designed as a glebe, but the pursuer's predecessors were infest therein, and in possession thereof before the ministers, and any possession they had was but by their sufferance and connivance. It was *answered*, That *decennalis et triennalis possessor non tenetur docere de titulo*, and the Minister was not only in possession thirteen years, but thirty years. It was *answered*, That albeit possession may be a title, yet it may be elided by the pursuer's right, which cannot be taken away but by prescription; whereupon the question arose, how the tolerance or sufferance of the Minister's possession was probable, whether by witnesses or not, seeing tolerances are not ordinarily so proved.

No 211.

Witnesses admitted to prove a minister's possession of lands to be by tolerance of an heir, and not to be a glebe belonging to the kirk.

THE LORDS found that if the Minister's possession were alleged to have been forty years, as belonging to the kirk, that the Duke's tolerance could only be