

No 125.

ance of whatsoever estate or quality, post litem contestatam; et statutum terminum, licet nonnulli in contraria fuerunt opinione.

*Colvil, MS. p. 362.*

No 126.

1610. November 30.

WEIR *against* KNIELAND.

HE who submitted as heir to his brother, will thereby be proved to be heir, albeit no decret follow upon the submission, but that the same be deserted.

*Fol. Dic. v. 2. p. 188. Haddington, MS. No 2026.*

No 127.

1612. June 23.

RAE *against* Laird of KELLY.

IN an action of recognition pursued by Adam Rae *contra* the Laird of Kelly, there were proponed certain exceptions peremptory, for proving whereof, there is an incident diligence used; which incident, by compearance of party, is denied, and litiscontestation is made therein, and a term assigned to prove; at the which term, the defenders *allege*, That the execution of the first summons was false and feigned. THE LORDS sustained the exception of improbation, notwithstanding it was *answered*, That the party has approved the citation by compearance, and had omitted this exception *tempore litiscontestationis*.—(See No 53. p. 6459.)

*Fol. Dic. v. 2. p. 186. Kerse, MS. fol. 205.*

No 128.

1614. January 20.

GORDON and CHALMERS *against* GORDON.

IN an action of special declarator by George Gordon and George Chalmers of Nock against George Gordon, at the Kirktown of Tyrie, upon a horning executed against him for slaughter of Alexander Chalmers, of Knockburly, in an exception proponed upon a submission which was not expired, repelled in respect it was a dilator, after a peremptor, not verified in the slaughter; and when they declared that they proponed it peremptorily, the LORDS fand, that they could not alter the nature of the declinator, by turning it into a peremptor.

*Fol. Dic. v. 2. p. 186. Kerse, MS. fol. 242.*