

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.*