

SECT. IV.

Second Diligence in Suspensions.

1624. January 15. KER against DICKSON.

No. 35.

In an action betwixt Mark Ker *contra* Dickson, for suspending of charges executed upon a contract, whereby the one party was obliged to enter the other to possession of lands, and which was suspended upon a reason admitted to the suspender's probation, bearing, that he had entered him to the actual possession of the same; the Lords found, that all such reasons of suspension in time coming, consisting *in facto*, and which of the law may be proved by witnesses, shall be proved at a term, which the Lords will only assign to prove the same; and that they will grant no more terms, nor further diets of diligence against the witnesses summoned at the said term, albeit they compear not to depone; but will conclude the cause at the said first term, without further protracting of the process.

Act. Nicolson & Oliphant.

Fol. Dic. v. 2. p. 416. Durie, p. 98.

* * Haddington reports this case

Mark Ker being charged by Dickson to pay a sum of money, suspended, alleging, that the charger was paid by intromission with mails and duties of certain lands; which being found relevant, and he not having produced probation in the first term; it was alleged, that he could have no farther terms, and the probation should circumduce; but because the charger had not protested that the suspender should only have one term, the Lords granted him one only farther term.

Haddington MS. No. 2966.