

No 171.

1630. *July 24.*—IN an improbation, the custom is, after the second term assigned for production and past, to grant certification, with provision, that the writs produced before such a day as they will appoint, shall be received; but sometimes the LORDS, after the second term, will give a third, upon considerations moving them.

1632. *June 26.*—IN the improbation pursued by the Earl of Marr against his Vassals, it was *alleged* for Pitsligo, That one of the two heirs portioners of line being dead, no certification could be granted against him. THE LORDS found, That the improbation should only cease for the defunct, and proceed against the other heir for the half pertaining to her.

Auchinleck, MS. p. 99. & 100.

No 172.

1629. *February 28.* MUIR *against* HIS TENANTS.

IN a like case with Dunbar against Tenants, No 167. p. 12073, the LORDS refused such an incident; but upon offer to make faith that the party at litiscontestation knew not that the persons were out of the country, a long day was assigned to the party user to lead all his probations of the exceptions, for which the incident was used, during which time he might execute his incident against all parties called therein.

Fol. Dic. v. 2. p. 189. Durie.

* * * This case is No 5. p. 3684. *voce* EXECUTOR.

No 173.

1629. *July 29.* MASTER OF STORMONT *against* DUNCAN MENZIES.

AN incident raised to prove an exception cannot be executed to another day than is contained in the act of litiscontestation.

Auchinleck, MS. p. 100.

No 174.

1630. *January 26.* Ross *against* ———.

AN indident diligence, for proving of an exception, being received and admitted to probation, and, in the second term, the pursuer thereof having cited witnesses, out of the country, upon 60 days, and offering to make faith that they were necessary witnesses to him, and craving further diligence against them, for the like space, because they were still out of the country, the LORDS refused to grant further diligence against them, upon 60 days, because they were out of the country before the first term when the incident was admitted, but the pursuer thereof then did not condescend nor protest for an incident