

1541. February 11. TENANTS of N. against MAGISTRATES of SELKIRK.

No 226.

LITISCONTESTATION is not maid nor inducit be proponing of ony dilatour exceptioun, nor be interloquoutour gevin be the Judge; bot the samin is understuid to be maid in ony actioun or cause, efter the proponing of ane peremp-tour exceptioun, or quhen the sumoundis, or ony part thairof, or ane peremp-tour exceptioun or allegiance is admittit be the Judge to the persewar's or defendar's probatioun.

*Balfour, (LITISCONTESTATION.) No 1. p. 342.*

\* \* The like was found in the case of ——— against the Heirs of Inverugie, 20th May 1542. BALFOUR, *eadem loco.*

\* \* This case is reported by Sinclair, MS.

IN the cause of spuilzie intended by certain poor tenants of ——— against the Provost and Community of Selkirk, as I remember, touching certain peats and fuel casting, the said tenants' procurator, Mr James M'Gill, failed in the libelling of the summons; and, in the conclusion thereof, asked the said tenants to be decerned to restore the said peats, when he should have sent and asked the persons libelled to be decerned, and for this fault of the summons, Mr Andrew Blackstone, procurator for the other party, asked absolutor from the sentence sought by the summons *causante illa ineptitudine*. The said M'Gill answered, That he would have his words, 'the said tenants' *pro deleto*, and so his summons was yet of perfect sentence, and the conclusion thereof, and desiring them, or any of them, to be decerned to have done wrong, and said, that the word 'them' referred to the persons libelled sufficiently. THE LORDS found by interlocutor, That the said Mr James M'Gill might do the same, *et in hoc corrigere libellum suum habendo illa verba pro deleta*, because of the practicks and law, *usque ad litiscontestationem libellus potest emendari modo predicto*, and also, *lis coram dominis concilii per propositionem dilatoriam, et interlocuturas desuper latis non inducitur, sed tunc commissa est ad probationem, et terminum statutum ad probandum*, which was not done yet in this cause; and also, in this cause, the LORDS mended the libel, and shew the same to the said Mr James M'Gill, and thereafter, that the said Mr Andrew had proponed *exceptionem hanc inepti libelli*, and asked therefore absolutor for his client.

*Fol. Dic. v. 2. p. 197. Sinclair, MS. p. 242.*