

No 227. 1541. February 17. EARL of BOTHWELL *against* BETHUNE.

IN the Earl of Bothwell's cause against Bethune for reduction of certain lands of his, comprised to umquhile James, last Bishop of St Andrews, the LORDS, by interlocutor, found and decerned, that Mr Hugh Rig, procurator for the said Lord, might have the words "the five merk" *pro deleto*, after that the said Bethune's procurator had desired absolutor, because that the said Lord's summons bore five merks of the lands, and there were eight merk and ten shilling worth of the lands appraised, and that he might not redeem the appraised lands but altogether, and so the said words being deleted, the summons imported the hails lands and so the LORDS admitted the said Earl's procurator to have *pro deleto*, the same words.

Fol. Dic. v. 2. p. 197. Sinclair, MS. p. 11.

No 228. 1542. May 17. COMMENDATOR of the PRIORY of ST ANDREWS *against* TENANTS.

Found that a general libel may be made special *cum processu* by a judicial declaration.

IN the cause of the Commendator and Tenants of the Priory of St Andrews, the LORDS, albeit the libel was general, and so that it could not be known wherein the place was hurt, or the rental diminished, because it was not libelled where the casting of the stanks, and the upholding of the dykes of Pitlochrie used to be put in the farmers' tacks, and now left out of the said Sir William Ramsay's tacks, the nineteen years was of avail, and so the libel was general in that point; nevertheless, the LORDS, by the said Sir William's confession, made an judgment of the avail yearly of the premisses, understood the place in so far hurt, and the rental so far diminished, as the said duties were yearly worth, decerned the tack for the same cause to be reduced, et hoc ideo quia licet super libello generali sententia ferri non possit, quia de jure generalis libellus procedit a parte altera, L. finali Cod. De annali exceptione; et satius est generaliter declarari in processu, ut ibi scribitur ideo cum litera presenti; Domini Consilii sententiaverunt generaliter illa non obstante ex eo quod per confessionem dicti Domini Gulielmi in processu factum fuit clarius.

Fol. Dic. v. 2. p. 197. Sinclair, MS. p. 25.

No 229. 1546. December 11. The QUEEN *against* MINISTER of SCOTLANDWELL.

Found, that after liti-con-
testation,

IN causa Reginae contra Ministrum de Scotlandwell Domini interlocuti sunt procuratorem Reginae non posse aliquid libelli sui pro deleto habere post pe-

remptoriam ex altera parte propositam quam de practica dominorum inducit litiscontestationem, postea de jure actor libellum mutare addere aut minuere non potest, nec in ea aliquid pro deleto habere.

Fol. Dic. v. 2. p. 197. Sinclair, MS. p. 66.

No 229.
the pursuer cannot alter or pass from any part of his libel.

1554. February 23. The QUEEN against CAPRINGTON.

No 230.

ANENT the action pursued by the Queen's grace against the Laird of Caprington and others of inquest for an assize of error, it was *alleged* by the said inquest, That the Queen should not pursue summons, because she had raised and pursued other summonses of error to the same effect of before depending before the Lords, and the exception is peremptory given in writ to the Lords, and answers thereupon, wherefore litiscontestation was made. It was *alleged* by the Queen's advocate, That he would renounce the foresaid summons. The other party *alleged*, That he might not renounce *post litiscontestatione* made. It was *alleged* by the Queen's advocate, That there was no litiscontestation made without there had been an exception peremptory admitted, or else the libel denied, or else the actor getting the libel to his probation, which was admitted, and ordained farther process, notwithstanding the allegiance of the inquest.

Fol. Dic. v. 2. p. 197. Maitland, MS. p. 113.

1574. July 1. EARL of SUTHERLAND against EARL of CAITHNESS.

No 231.

THE Earl of Sutherland pursued the Earl of Caithness for production of a contract of marriage made betwixt them for marriage of the said Earl of Caithness's daughter to the Earl of Sutherland, alleged by the pursuer to be in the defender's hands and keeping, and referred the same to the defender's oath. The defender *alleged*, He should not give his oath *de veritate*, because the pursuer already had pursued him for it, and had got it to his probation, that the defender had it, and had produced certain witnesses thereupon, who were sworn and examined, and so litiscontestation made, and therefore he was not obliged to give his oath *de veritate* in the said cause; which allegiance of the defender, the LORDS admitted.

Fol. Dic. v. 2. p. 200. Colvil, MS. p. 241.

1575. January 20. GLENBERVIE against UDNEY.

ANENT the action pursued by the Laird of Glenbervie against the Laird of Udney, for the double of Udney's marriage, by reason, that he married by Glenbervie's daughter, who was offered by her father as party agreeable, as he

No 232.
Found as above.