

subscribed by the defunct himself, (as was perfectly known to every one,) the Lords assoilzied from the improbation; for it is the custom of gentlemen, &c. to make their latter wills in secret while they are in life, and call none thereto; and so may be called testaments *in procinctu, potius facta quam nuncupativa, et cum solennitatibus in jure requisitis.* Page 167.

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1583.

GEORGE KNOLLS *against* RICHARD IRVING.

IN an action between George Knolls and Mr Richard Irving, an exception and duply being admitted to the defender's probation, the pursuer in the mean time raised a new summons *super eadem re, et eodem modo agendi variatis nonnullis circumstantiis*: Upon the which summons there was alleged no process, in respect of the state of the former process; yet it was found that the pursuer might renounce his instance, and pass from his libel and reply, *ante assignatum terminum*; nevertheless refunding to the defender his expenses, at the sight of the Lords. Page 197.

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1583.

IN a reduction of a decret, the summons and executions being craved to be produced now *in secunda instantia*, and after fourteen years' space, because the pursuer was never summoned to the giving of the decret,—the Lords would not astrict either the defender or the clerk to produce them after so long a time; but thought the decret that bore the compearance of parties sufficient. Page 248.

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1583.

BOTHWEL *against* The BISHOP of ORKNEY.

THE Bishop of Orkney having obtained a decret against an uncle of his own called Bothwel, this Bothwel got that same decret reduced thereafter upon this reason:—That he, being out of the country, in Almain, *animo remanendi*, where he had dwelt for the space of 15 years, it was not enough to summon him upon sixty days; but he should have been summoned so that the same might have come to his knowledge. Page 319.

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1583. *January.* The HERITRIX of MURRAY *against* The TUTOR of SANQUHAR.

A TACK during will and pleasure lasteth no longer than the setter's lifetime, *quia voluntas morte extinguitur.* Page 325.