

ordinary action, *multo magis* ought it to be refused by way of a bill, which is most summary. Yet the reason of the difference I suppose lies here, that in the matter of bills the Lords exerce much of their *officium nobile*, by which they may certainly command the defender to exhibit these writs to the clerk of the im-probation, there to lay, &c. whereas in ordinary actions they are astricted to the ordinary forms which they may not transgress.

*Advocates' MS. No. 5, folio 70.*

1669. *December 24.*

SEMPLE *against* WALKER.

IN the action of suspension, Semple *against* Walker, called about that same time, my Lord Stair turned a decret of the Sheriff of Lanerk into a libel, because it bore only that the defender being twice lawfully summoned to give his oath upon the libel compeared not, and so was holden *pro confesso*; and did not bear that he was personally apprehended: whereupon we were necessitated to refer the same of new again to the suspender's oath. Whereas it might have been alleged, that this decret ought as well to be sustained as they sustain a horning bearing delivery of a copy to the party, though it bear not that he was personally apprehended.

Vide *infra* November 1676, *Findlay*, No. 504. *Dury*, 22d July 1626, *Stewart* against *Ahanay*.

*Advocates' MS. No. 6, folio 70.*

1670. *February.* GEORGE MOSMAN *against* ADAM and ANDREW BELLS of Belford.

IN the suspension Adam and Andrew Bells of Belford *against* George Mosman, this reason of suspension was repelled, that the charger's right being a right flowing by translation from Elizabeth Cunyghame, who had an assignation to the bond charged upon, her assignation was never intimated to the suspenders in the cedent's lifetime, and so could not produce summary action by a charge; but ought to have been pursued upon, *via ordinaria*, in regard that the assignation was intimated to James Bell, (who was principal debtor in the bond,) before the cedent's decease, which was found a sufficient intimation likewise to the cautioners. Vide *Dury*, 23d January, 1624, *Stevenson and the Laird of Craigmillar*. Vide *Cujacium, Codice, De duobus reis*. See 28th November, 1678, *Reid and Bruce of Newton*.

The second reason of suspension was found relevant, viz. that the suspenders were not *in tuto* to make payment of the sum to the charger, because the charger's author's right was questioned, and under reduction at the instance of Quintene Findlay and his wife, as nearest of kin to John Lithgow, granter of the assignation: the reason of reduction was death-bed.

Whereto it was REPLIED,—That this bond of Belford's was a bond which might lawfully be assigned on death-bed, because, in the body of it, it bears a dispensa-