

this case, I think, if the defenders did make offer to fulfill their part of the contract, the Lords will ordain the pursuer to adhere to the contract, and will never annul the same.

*Advocates' MS. No. 65, folio 80.*

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1670. *July 8.* ANENT PURSUERS DELAYING TO INSIST.

WHERE a pursuer in an ordinary action, or a charger in a suspension, defers and refuses to insist; the most effectual way to force them is by raising a summons narrating the action or charge, charging the pursuer to insist; with certification, if he do not insist, he shall never be heard thereafter to insist in that action; and the protestations put up for not insisting, or decreets suspending the letters ay and while the charge be produced, are but elusory. *Ita Norvell.*

*Advocates' MS. No. 66, folio 80.*

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1670. *July 8.* SIR GEORGE LOCKHART *against* JAMES STEWART.

IT was contraverted betwixt Sir George Lockhart, and James Stewart, if a messenger, as judge to the formality and leading of apprising, can adjourn or continue the diet of the apprising from one day to another. Sir George, Sir Robert Sinclair, and many others, thought he had no such power, since the diet and citation of the defender to see the comprising led on such a day was peremptory, not bearing "with continuation of days," and otherways comprising (which of themselves are most solemn and public acts) should be all carried on clandestinely: yet thought he might prorogate upon urgent necessity, or on just and lawful causes, or where there were impediments why he could not keep that day; yea, Sir Robert called it a novelty or heresy in law, to say he could continue; and thought any comprising that bore any such adjournment was *ipso facto* null. Yet James Stewart, and Mr. George Norvell, had seen such comprising, and alleged that any ordinary jurisdiction in Scotland might prorogate, but such was the messengers', they being appointed by the acts of Parliament judges to comprising; and such adjournments are ever done *periculo petentis*, and if any be lesed thereby, they have a remedy, *viz.* to complain to the Lords. *Vide infra Num. 216.* [12 *July* 1671, *M'Pherson* against *Murray.*]

*Advocates' MS. No. 67, folio 80.*

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1670. *July 9.* LIDDELL *against* SIR DAVID OGILBIE.

THE deceased Laird of Cullene being about to marry his daughter on Raploch's son, writes in to this Liddell, merchant in Edinburgh, desiring him to send him some velvets and other silks, &c. and obliges him to repay him thankfully; which