

leageance found relevant, and admitted to either, litiscontestation should be understood to be made as to that allegiance. 2. And likewise as to that effect, that the parties are concluded; and cannot be heard thereafter to propone any other allegiance. 3. The terms being run as to allegiance not discussed, they are concluded as to the probation of it; as if the relevancy had been discussed by a formal act of litiscontestation: whereas it is remitted to be considered after probation: seeing often *ex facto oritur jus*; and, upon consideration of the circumstances after probation, the Lords have more clearness to determine relevancy.

Page 74.

1674. June 12. FREEHOLDERS of LINLITHGOW *against* The COMMISSIONERS to the PARLIAMENT.

IN a suspension, at the instance of the Freeholders of Linlithgowshire, against their Commissioners to the Parliament;—

The Lords found, That if the prorogations and recesses of Parliament be for a considerable time, so that the Commissioners do or may go home, the Commissioners should not have their fees or charges during the same. 2. That if the prorogation be for a short time, and the Commissioners, having their residence at a little distance, in Edinburgh, or Linlithgowshire, do or may go home, they ought not to have fees during that time. 3. If there be Articles sitting during that time, and they do not go home, though they be not upon the Articles, they should have their fees; because they are concerned to know and inform themselves, what is in agitation in the articles.

Newbyth, *Reporter*. Monro, *Clerk*.

Page 76.

1675. January 5. PITTARRO *against* The EARL of NORTHESK.

THE Earl of Northesk, having taken an assignation to a bond, granted by the deceased Laird of Craig and Earl of Dundee to Margaret Carnagie and her children for 1000 merks; and having comprised thereupon Craig's estate; he did, after the comprising, give a bond to the said Margaret Carnagie and her children, that, in case he should recover payment, he should make payment to them of the foresaid sum.

Sir David Carnegie of Pittarro, being debtor to the said Earl in the sum of 2000 merks, SUSPENDED upon that reason;—That the said Margaret and her children had assigned to him the said back-bond, granted by Northesk; and, that the said Earl had disposed the right of the said apprising to the Lord Hatton; and therefore became liable to pay the said sum to the suspender's cedent; and the suspender may, and does compensate upon the said bond, *pro tanto*.

It was ANSWERED by the charger; That the comprising did neither belong to the suspender's cedent, nor was to their behoof; the said bond, granted by the Laird of Craig, being assigned *ab initio*, without any back-bond; and the com-