Answered for Murray, That the hurry and end of a session can never be a relevant cause of reduction; for this would militate against all done upon the last eight days, wherein much business is dispatched; and the thing was fairly done, and he had seven session days to have applied, and did not; and that it was put up in the roll against Glasswell only is denied, and cannot now be proved, they being now cancelled and torn; and this was not a certification in absence, for he had compeared, and taken terms, and yet kept up his writs, and had a competent time to have applied, either to the Ordinary who pronounced it, or to the whole Lords, but neglected both; and to overturn such decreets, is to shake the security of the lieges, many of their rights depending thereon; and the preparative were of more value ten times than the import of this cause; and they never repone against them, unless there be precipitation, or some informality in the extracting, which cannot be pretended here. THE LORDS were much straitened in this conflict betwixt strict law and equity. Some were for refusing this summary application, and remitting him to go on in his reduction as accords. Others were for trying, before answer, how it was inrolled, and if there was any legerdemain or generality used here. Some again remembered two cases, where their predecessors had loosed such certifications, and reponed against them, on the 26th June 1673, Sir R. Murray *alias* Crichton, against Murray of Broughton, No 160. p. 6736.; and 17th February 1675, Bannantine *contra* Rome, No 163. p. 6742. But it was alleged, in the first case, the defender was at the time in Ireland, and was in the end of the session; and the complaint was made the very first day of the next sesion; and, in the second case, his advocate was lying sick at the time; and Murray contended that Wood had no material prejudice, for his debt was more than satisfied, and extinct by his intromissions. Yet the LORDS, by a plurality of seven against six, reponed him against the certification, he paying him every farthing of the expense he should give up upon oath, and what further he had put him to by answering this bill, and debating *instanter in causa*, without putting him to any more delay. Some thought this a great exercise of the Lords *officium nobile*, for when certifications are fairly extracted, they should be irreversible. But equity inclined the Lords, to the more favourable side, according to Craig's words, 'In dubiis casibus mitioria nobis semper placuerunt;' and in the application and interpretation of laws, the doctors bid us reprobate *nimias argutias*, mere subtilties and scrupulosities unsupported by equity. No 166.

Fountainhall, *v.* 2. *p.* 522.

1710. *November* 24.

Colonel GEORGE PRESTON *against* Colonel JOHN ERSKINE.

No 167.

IN a reduction and improbation at the instance of Colonel Preston against Colonel Erskine, the LORDS refused to allow writs to be received in, against

No 167. which a decreet of certification was fairly extracted, albeit payment of the pursuer's expenses was offered.

Forbes, p. 442.

SECT. IX.

Abiding by.

1616. *February* 6. LORD HERRIES *against* ANDREW KER.

No 168.

IN an improbation pursued by the Lord Herries against Andrew Ker, the LORDS fand, that albeit the direct manner was extant, and that the improver did not use the indirect improbation, yet it was lawful to the party user to propone articles of approbation, specially seeing there was but one witness existing.

Kerse, MS. fol. 206.

No 169. 1618. *June* 16. A. *against* B.

THE LORDS fand, that after a day taken for production in improbations, the party could not pass from his compearance.

Kerse, MS. fol. 206.

1625. *June* 21. L. MURDESTON *against* BAILLIE.

No 170.
A bond was taken to be improved, and the clerk register produced the principal. The defender did not abide by, remaining absent. Without further proof of falsehood, the bond was declared to make no faith.

AN improbation being pursued by the L. of Murdeston against Mr James Baillie, for improving of an obligation, wherein the Clerk of Register and his deputes being convened for production of the principal bond, the same being registrate in the books of council, and the bond being produced by the clerk, and the party defender being called, and not compearing, but being absent, the said bond upon the second summons of continuation, without further proceeding in the cause, was decerned to make no faith, and instantly was then cancelled in judgment before the Lords at their command; the reason was, because the party was twice summoned to hear and see the same produced and improven, and albeit it was produced by the clerk, yet seeing the party summoned as said is, compeared not to abide by the bond, but was absent, there-