

remptoriam ex altera parte propositam quam de practica dominorum inducit litiscontestationem, postea de jure actor libellum mutare addere aut minuere non potest, nec in ea aliquid pro deleto habere.

Fol. Dic. v. 2. p. 197. Sinclair, MS. p. 66.

No 229.
the pursuer cannot alter or pass from any part of his libel.

1554. February 23. The QUEEN against CAPRINGTON.

No 230.

ANENT the action pursued by the Queen's grace against the Laird of Caprington and others of inquest for an assize of error, it was *alleged* by the said inquest, That the Queen should not pursue summons, because she had raised and pursued other summonses of error to the same effect of before depending before the Lords, and the exception is peremptory given in writ to the Lords, and answers thereupon, wherefore litiscontestation was made. It was *alleged* by the Queen's advocate, That he would renounce the foresaid summons. The other party *alleged*, That he might not renounce *post litiscontestatione* made. It was *alleged* by the Queen's advocate, That there was no litiscontestation made without there had been an exception peremptory admitted, or else the libel denied, or else the actor getting the libel to his probation, which was admitted, and ordained farther process, notwithstanding the allegiance of the inquest.

Fol. Dic. v. 2. p. 197. Maitland, MS. p. 113.

1574. July 1. EARL of SUTHERLAND against EARL of CAITHNESS.

No 231.

THE Earl of Sutherland pursued the Earl of Caithness for production of a contract of marriage made betwixt them for marriage of the said Earl of Caithness's daughter to the Earl of Sutherland, alleged by the pursuer to be in the defender's hands and keeping, and referred the same to the defender's oath. The defender *alleged*, He should not give his oath *de veritate*, because the pursuer already had pursued him for it, and had got it to his probation, that the defender had it, and had produced certain witnesses thereupon, who were sworn and examined, and so litiscontestation made, and therefore he was not obliged to give his oath *de veritate* in the said cause; which allegiance of the defender, the LORDS admitted.

Fol. Dic. v. 2. p. 200. Colvil, MS. p. 241.

1575. January 20. GLENBERVIE against UDNEY.

ANENT the action pursued by the Laird of Glenbervie against the Laird of Udney, for the double of Udney's marriage, by reason, that he married by Glenbervie's daughter, who was offered by her father as party agreeable, as he

No 232.
Found as above.

No 232. alleged, the Laird of Glenbervie took in hand to prove, by the notary and witnesses contained in the instrument of offering and intimation, that the gift of marriage was sufficiently intimated to him, and read, at least offered to be read, although that such words *per expressum* were not contained in the said instrument of intimation; which being admitted to Glenbervie's probation, he summoned the notary, the witnesses, and the party, to give oath *de calumnia*, and at the day of compearance, he would have referred the same to his oath of verity, so that he would give *juramentum veritatis* in that cause. Udney refused, because the pursuer had taken in hand to prove his allegiance by the notary and witnesses contained in the instrument foresaid, and produced them to this effect to farther proving thereof; which allegiance of the Laird of Udney was found relevant by the LORDS, and he ought not to give *juramentum veritatis*, in respect produced, as said is.

Fol. Dic. v. 2. p. 200. Colvil, MS. p. 250.

No 233. 1575. February 15. LAIRD OF BARGENY against ———.

THE Laird of Bargeny pursued ——— for spoliation of certain goods. The defender proponed a good peremptory exception; and because no day was assigned or taken to prove the said exception, the pursuer would have passed from that instance, but the defender alleged he should have absolvitor, he proving the peremptory; which allegiance of the defender, the LORDS found relevant, and repelled the pursuer's allegiance; and decerned, that from the time litiscontestation was made, that is, when the defender proponed a peremptory exception, and the same referred to his probation by interlocutor, that the pursuer might not renounce the instance, nor gang frae the summons as is libelled, albeit the defender had taken no time to prove his exception, but absolvitor should be given therefrom, the defender proving the exception, or else the pursuer should pass from the whole cause.

Fol. Dic. v. 2. p. 196. Colvil, MS. p. 252.

1583. February. LUNDIE against GRAY.

No 234. IN an action pursued by the Lady Lundie against Helen Gray, after that there was a reply proponed and admitted, taking away an exception, the pursuer would have gone from the reply. It was *answered*, That litiscontestation was made in repelling the exception, and admitting the reply. It was *answered*, That there could be no litiscontestation made in repelling of the exception, and admitting of the reply, except there had been a term assigned. THE LORDS found, by interlocutor, That there could not be litiscontestation,