

dwyning pain and heavy sickness, and might nor could not have compeared; and now being convalesced, and stoped of his heavy infirmity, and willing by his compearance to purge his contumacy, rendering verified the just cause of his absence, ought and should be restored against the decret, and heard to depone in the cause, quhilk he is content to do, for satisfying both the Lords and party; according to quhilk, his oath and deposition, sentence ought allenarly to be given, and the sentence given retreated and reduced, and he reponed against the same. THE LORDS find the reasons relevant, and assign a term to prove, notwithstanding sundry allegeances proponed in the contrair and repelled.

No 92.

Fol. Dic. v. 2. p. 184. Nicolson, MS. No 247. p. 174.

* * Haddington reports this case :

A MATTER being referred by the principal summons to the defender's oath and he lawfully summoned to give his oath, not compearing, and in respect thereof holden as confessed, and decret given against him, if he thereafter intent reduction because he could not compear when he was summoned, being deadly wounded and unable to travel, and produce a testimonial thereof by the chirurgeon and minister, the same will be preferred to his probation, and he preferred therein to his party, offering to prove that when he was summoned to compear he was unable to travel, and then resorted to kirk and market, because they thought the testimonial of his sickness a more famous admynicle of probation than witnesses alone.

Haddington, MS. No 1922.

1616. *March 28.* LAIRD OF BALMANNO *against* THE PARISHIONERS OF FORDEN.

No 93.

In an action of spuilzie of teinds by the Laird of Balmanno, against the Parishioners of Forden, the LORDS would not hold the defenders as confessed, who were summoned to give their oath by the summons of continuation, while they were of new summoned.

Fol. Dic. v. 2. p. 183. Kerse, MS. fol. 256.

1616. *July.* GLENDINNING *against* TENANTS OF PARTON.

No 94.

In an action pursued by Glendinning of ——— against the Tenants of Parton, for spuilziation of teinds, the LORDS would not hold the defenders as confessed upon the summons of continuation.

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Fol. Dic. v. 2. p. 183. Kerse, MS. fol. 256.