

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

*Forbes, p. 442.*

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SECT: IX.

Abiding by.

No 168. 1616. *February 6.* LORD HERRIES *against* ANDREW KER.

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.*

No 170. 1625. *June 21.* L. MURDESTON *against* BAILLIE.

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-