

No 15.

calumnious in the managing of it, and that here he had maliciously put Mr Smith to vast charges in proving a trust which afterwards he acknowledged; therefore they found him liable in Mr Smith's expenses, which they modified to L. 200 Scots, especially seeing his absolvitor proceeded upon his own oath. This is the first case in which I have observed the victor to pay the expenses of him who has succumbed in the cause; but in effect it was imposed *in modum pœnæ*, for his calumnious management of the process. In the English law, there is a parallel case betwixt Mrs Jones and Sir Robert Ker, marked by Mr Turner in his folio history of Remarkable Providences, cap. 134.

*Fol. Dic. v. 1. p. 287. Fountainball, v. 2. p. 110.*

1742. July 12.

CUMMING against ABERCROMBY.

No 16.

Expenses given in a tentative process of reduction and improbation, where the defender produced a clear right to the estate.

A TENTATIVE process of reduction and improbation being brought against a gentleman in possession of an estate, who, in the course of the process, produced a clear progress from the 1663 downward, which, by the positive prescription, secured him against all challenge, the Court was of opinion, That such tentative processes, which give much vexation, ought not to be rashly commenced; and therefore, abstracting from all particular circumstances, they found expenses due to the defender.

*Fol. Dic. v. 3. p. 198. Rem. Dec. v. 2. No 29 p. 46.*

1747. February 24.

WEIR against WHITE.

No 17.

A REDUCTION repeated *incidenter*, and not executed, can go no farther than the suspension (which was the present case) or libel of the other process into which it is repeated.

Expense of a refused bill of advocation, is an instance of expense whereof the party aggrieved has no access to get reparation. See PROCESS.

*Fol. Dic. v. 3. p. 199. Kilkerran, (PROCESS.) No 7. p. 435.*

No 18.

A defender was found liable in expenses, tho' he prevailed in part, the point which he gained not being that which occasioned the expense.

1747. June 16.

CRUICKSHANKS against FORSYTH.

IN the year 1744, James Cruickshanks, master of the grammar-school at Elgin, was employed to bleach some linen cloth for Alexander Forsyth, Bailie of that burgh; and having carried the same to his shop, the Bailie carped at the cloth as ill whitened; and, without any provocation from the answer made by Cruickshanks, after giving him hard names, gave him a stroke over the head with his ellwand. The Bailie was sensible of the crime he had committed, but,