

the party could obtrude no argument; whereas the defender, by his incident, alleges, *positive et affirmative*, that these evidents were false, and that they are in the parties' hands whom he convenes, which of necessity ought to compel the user of the incident to condescend specially what writs these are, which he *positive* affirms to be, and that the same are in the defender's hands, called for by the incident;—the Lords found, that this incident could not be sustained in the general clause, albeit that clause was as general in the principal summons of improbation, except the pursuer and user of the incident were special upon all the particular writs for which the defenders were convened in that incident; and therefore ordained the user to condescend specially upon each particular writ for the which he craved the incident. Which being specially condescended upon, the Lords sustained the incident, but not for the general clause.

*Act.* Hope and Aiton. *Alt.* Nicolson and Stuart. Scot, Clerk.

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1623. June 24. LADY WINTON *against* SCOT.

IN an action of spuilie of teinds, the Lady Winton *against* Scot,—the Lords would not, after litiscontestation, sustain an exception, the defender being then compearing, who was absent in the process when litiscontestation was made, albeit it was the first term of probation, and no witnesses then received, when he offered to propone it, though founded upon the Act of Parliament for requiring of teinding, and upon teinding and intromitting, conform thereto. Which exception was not received, albeit at the first term proponed; because some part thereof consisted *in facto*, which could not instantly be verified, albeit the most part was verified instantly.

*Act.* Stuart. *Alt.* Scot. Gibson, Clerk.

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1623. June 24. ACT OF SEDERUNT ANENT COMPRISINGS.

A STATUTE was made by the Lords, that all comprisings which should not in time coming be executed upon 15 days free, betwixt the day of the denunciation and comprising, should be found null; and sicklike, all bypast comprisings which had that defect, should also be found null, except only such bypast comprisings whereupon charter and sasine had followed, and which were clad with real possession of that which was comprised:—and that nullity to be received summarily, either by exception or action.

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1623. July 3. HUNTER *against* WATSON.

A TRANSFERRING being pursued at the instance of one Hunter, as son and heir to his father, who had contracted with one Watson, and, upon the contract, had charged him for implement thereof; which charges were suspended by Wat-