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 spuilyie 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-

son, and caution found by him at the time of the granting of the suspension, as use is; and, before the discussing of the suspension, Hunter the charger dies:—this contract, with the act of caution and suspension, was desired to be transferred in the heir of that Hunter who charged. Which the Lords sustained, and found that there was no necessity of a new charge, but that the cautioner in the suspension remained obliged, notwithstanding of the charger's decease, in respect the cautioner and principal suspender himself were both in life.

Act. Haliburton. *Alt.* Russel. Gibson *Clerk. Vid.* 21st March, 1623, Cunninghame *against* E. of Glencairn; 23d December 1630, Mr Robert Hart.

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1623. *July* 25. The EARL of NITHSDALE *against* ————

EARL Nithsdale, infeft as heir to his brother, pursuing removing from certain lands; the defender compearing, and alleging an infeftment granted by the King's Majesty to him, proceeding upon the forfaultry of the pursuer's brother, and possession conform thereto;—the Lords repelled this allegeance, because the pursuer replied, that the forfaultry whereupon the excipient's right depended was reduced. Which reply the Lords found relevant to be received in the process summarily, but any reduction to take the defender's right away flowing from the forfaulter; notwithstanding that the defender duplied, that, in the same Parliament wherein the forfaultry was reduced, there was an express Act made, that what was done in that Parliament should not prejudge particular parties, *viz.* the Act *salvo jure cujuslibet;* and so, he being a party, having interest, and not called to that reduction of the forfaulture, cannot be prejudged. Which duply was repelled.

Act. Hope. *Alt.* Belshes. Gibson, *Clerk. Vid.* 10th December 1622, E. of Rothes; *penult.* June 1627, John Stuart; and 7th February 1627, John Stuart; *ult.* March 1627, Lo. Balmerinoch; 27th November 1621, E. Nithsdale; 23d July 1624, Lo. Harris; 23d July 1625, Patrick Whitelaw; 27th July 1626, Finlason *against* Cunningham.

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1623. *July* 25. ———— *against* ————

IN an action ———— against ————, for redemption of lands, the defender, compearing, desired the money to be exhibited before the Lords, that he be not frustrate thereof, and thereafter was content that sentence should pass;—the Lords found the pursuer could not be compelled to exhibit the money; seeing he had consigned the same, conform to the order of the reversion; and could not be further compelled to consign the same before the Lords, and to take it up where he had consigned it the time of the order, seeing the order was not quarrelled.

Act.———. *Alt.* Belshes. *Vid.* 7th December 1631, Grierson *against* Gordon.

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