No 167. for 60 days, nor declared then that the parties were out of the country; notwithstanding whereof, the incident was sustained, seeing he had protested for an incident; but the Lords ordained the users thereof to make faith, that they had just cause to use that incident against these persons called therein, and that they were necessary parties, without the which making faith, they would not sustain the incident against them. See No 172. 12076.

Act. *Sharp.* Alt. ——. Clerk, *Gibson.*

*Fol. Dic. v.* 2. *p.* 189. *Durie, p.* 260.

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No 168. 1627. *June* 21. Hay *against* The Laird of Vaine.

In a special declarator pursued by Mr Francis Hay against the Laird of Vaine, there being two allegeances admitted to the defender's probation, at the day assigned to him for that effect he produced an incident. The pursuer, in the principal cause, *alleged*, No incident for any evidents or discharges made to the defender's father, because he being the person who ought to succeed him, these writs should be presumed to be in his own hands. *Answered*, That he not being heir to his father could be accounted in effect but a stranger. The Lords, in respect of this reply, sustained the incident.

*Spottiswood*, (Incident Diligence.) *p.* 172.

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No 169. 1627. *November* 18. Gilbert Kirkwood *against* John Inglis.

In an incident raised against the havers of writs, it is not necessary that the makers and subscribers of the said writs be summoned.

*Auchinleck, MS. p.* 100.

*** Durie's report of this case is No 17. p. 3976, *voce* Exhibition.

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No 170. 1627. *November* 23. Carruthers *against* Johnston.

In an improbation pursued by John Carruthers of Rammerskails against Thomas Johnston, the defender raised an incident for recovering of the whole evidents called for generally, without condescending upon any in particular. *Alleged*, That the incident could not be sustained, because there was no particular writ called for, so that witnesses could not be received for proving thereof. *Answered*, That ought to be repelled, because he calleth for the whole writs contained in the summons of improbation, and he is as special in the incident as the summons. The Lords would not sustain the incident, unless the