

No 12.

1664. July 19. Sir LAURENCE SCOT *against* Lady SHENALTOUN.

IN an act of litiscontestation, betwixt Sir Laurence Scot and the Lady Shenaltoun; a defence of payment being found relevant, *scripto vel juramento*, for Sir Laurence, and not having cited the Lady to give her oath, nor produced any writ, the term was craved to be circumduced.

THE LORDS did not circumduce the term; but found that the pursuer should have been still ready to produce his client to depone, if the defender made choice of his oath.

Stair, v. I. p. 217.

1667. February 13.

LORD JUSTICE CLERK *against* RENTOUN of Lambertoun.

No 13.
An oath of party, relative to accounts, does not preclude investigation of the fact.

THE Lord Rentoun, Justice Clerk, pursues Rentoun of Lambertoun, as heir to his father, for count and payment of his rents, woods, and planting, intromitted with by Lambertoun, in the beginning of the troubles. It was *alleged* for the defender, Absolvitor; because, by the act of indemnity, the lieges are secured, as to all things done by any pretended authority for the time: *Ita est*, The pursuer being sequestered, the defender's father meddled by warrant from the Committee of Estates, and made count to them, as appears by his account produced, which is balanced by the Committee; *2do*, The said account bears, that Lambertoun made faith that it was a true account, nothing omitted in prejudice of the public; after which he could not be questioned, either for any thing in the account, or for any thing omitted and not charged. The pursuer *answered*, That the act of indemnity contains an express exception of all persons that meddled with any public monies, and had not made count therefor, that they should yet be accountable; *2do*, The account produced contains two accounts; one in *anno* 1641, another in *anno* 1643. The first is not approved by the Committee, but adjusted by three persons, who were no members of the Committee, and whose warrant is not instructed; and the second account is only approved, wherein the charge is a rest in the tenants hands of the former account, and the oath is only adjected to the second account, which cannot import that Lambertoun omitted nothing in the first account, but only that he omitted nothing in the second, and his oath is only to the best of his knowledge, and can import no more, than the oath of an executor upon the inventory, which excludes not the probation of superintromission. It was *answered* for the defender, That the second account being the rest of the first account, the approbation of the second must approve both, and the approbation is sufficient warrant for him to intromit, and the auditors to count with him.