

No 180.
having of the
writs by wit-
nesses.

Which incident the LORDS sustained, and would not restrict the terms of probation in the incident to horning against witnesses, and caption; but allowed four terms, and ordained the same to be shorter.

Stair, v. 1. p. 327.

1667. July 3.

Mr ROGER HOGG, and other Creditors of Wauchton, *against* COUNTESS of HUME.

No 181.
Incident not
sustained at
the instance
of any but
those whose
names as pur-
suers were
filled up in
the bill.

IN an incident pursued by the Creditors of Wauchton against the Countess of Hume, it was *alleged* for the Countess, that the incident as to several of the creditors could not be sustained, and likewise could not be sustained against several of the havers, because, as to these, the incident was without warrant, their names not being contained in the bill at the Signet. It was *answered*, The bill contained several names, and a blank for others, which is a sufficient warrant for the raisers of the incident to insert whom they please. It was *replied*, That incidents being odious, strict form should be observed in relation to them, so that a new pursuer cannot be supplied by the blank, who did not supplicate by the bill; and *alleged* a decision the last Session, where it was so found in an incident at the instance of the Feuars of Goldinghame against the Lord Justice-Clerk.

THE LORDS sustained not the incident as to any of the pursuers thereof whose names were not in the bill; but sustained the same against any of the havers, albeit their names were not contained in the bill, it being ordinary to get summons upon bills, upon such persons named, and others wherein the persons names insert, are always sustained; but it is not so in the pursuers; and yet this would hardly have been sustained in another case than an incident, which is unfavourable.

Stair, v. 1. p. 468.

1676. July 5.

MUIR *against* M'AULAY.

No 182.
A diligence
against wit-
nesses sus-
tained, tho'
not taken out
till the term
of probation
was past.

JOHN MUIR having pursued M'Aulay for a bargain of victual, a term was assigned to him to prove the bargain; whereupon he adduced witnesses. The defender *alleged*, That the diligence was null, being extracted, and dated after the elapsing of the term.

THE LORDS found, That the term being assigned with continuation of days, a diligence taken out at any time before the term was circumduced is sufficient.

Fol. Dic. v. 2. p. 191. Stair, v. 2. p. 439.