

that in the like cases, after the second term, the defender should not be heard to propone any defence against the action, which was competent before litiscontestation.

No 243.

Act. *Belshes.*Alt. *Nicolson.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 199. Durie, p. 26.*

* * * *Nota*, This same was found in the like case *in terminis*, betwixt the Sheriff of Forest and the Earl of Nithsdale, February 2. 1625, Nicolson being for the pursuer, Hope for the defender, Gibson clerk.

Durie, eodem loco.

1624. June 9.

L. TOUCH against E. HUME.

IN an action betwixt the L. of Touch and the E. of Hume, after litiscontestation was made, and the term of probation come, admitted for proving of an exception, the pursuer desired to be permitted to propone and reply for eliding of that exception, which reply was newly come to his knowledge, since litiscontestation, and whereupon he was content to make faith: The LORDS found, that, after litiscontestation, neither exception or reply might be proponed, as *noviter veniens ad notitiam*, where the same consisted *in jure*, seeing no party ought to be ignorant of the law; and therefore that allegiance, of *noviter venientis ad aures*, could not be desired to be proponed by any party, but where the same consisted *in facto*, and also where the proponer instantly shewed the instruction and verification thereof: But it being contested by the defender, that it was against all law, to suffer a pursuer to propone a reply, as *noviter veniens ad notitiam*, seeing it was only competent in an exception, and not in a reply; the LORDS gave no answer to this doubt, if the pursuer might propone a reply, as *noviter perveniens ad notitiam*, or not, but left it undecided.

No 244.
After litiscontestation the Lords refused to receive either exception or reply, as *noviter veniens ad notitiam*, where the same consisted *in jure*.

Act. *Stuart & Craig.*Alt. *Hope.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 200. Durie, p. 127.*

1625. June 10.

Dr JOLLY against _____

FOUND by the LORDS, where the pursuer passes from his compareance *pro loco et tempore*, that the defender ought not only to have his interlocutor, but also sentence absolutor frae all exceptions that are found relevant and proven.

Fol. Dic. v. 2. p. 196. Kerse, MS. p. 183.

No 245.