

death; *2do*, It appeared by the decret that the defender Robert was personally apprehended, and consequently it must stand with much better reason than a decret against a person out of the kingdom legally cited, which decrets are every day sustained; *3tio*, Though the decret did not bear the procurator's producing a mandate, yet it did not from thence follow, that no mandate was produced; and this defect, though true, was supplied by the defender's being personally apprehended; *4to*, It was no presumption against the decret, that a great sum was libelled, and thereafter restricted, that being the daily practice.

THE LORDS found, That the decret was a presumptive evidence of the debt, which they sustained, except the defenders did take it off by a more clear probation.

N. B. In this cause there was a letter from the clerk of the Bailie-court of Cuningham produced to the Lords, which bore, that neither a mandate, when one was personally apprehended, nor second citation, was usual in that Court.

Act. Pat. Boyle.

Alt. And. Macdowal.

Clerk, Justice.

Edgar, p. 26.

1732. December 21.

ROBERTSON against M'KENZIE.

A DECREET of an inferior court was turned into a libel long after the defender's death, he being held as confessed, and yet no citation *pro confesso*.—See APPENDIX.

*Fol. Dic. v. 2. p. 183.*

1738. February 24.

MARY DICK against HELEN AITON and JAMES CASSIE, her Husband.

DICK having obtained a decret against Cassie and his wife for 1000 merks, they afterwards *craved*, That certain articles of mourning, bed, board, &c. furnished by them to her, might be allowed to be imputed in extinction of the sums pursued for, conform to an account given in; and *insisted*, That, before they condescended, she should confess or deny, in terms of the act of sederunt, 1st February 1715.

Mary Dick *answered*, The account produced is prescribed, and only probable by her oath (which she is willing to give;) in which case, the act of sederunt does not take place, it being only calculated for this purpose, that people might confess or deny a fact that was offered to be proved by witnesses, that in case

No 117.

No 118.

No 119.

A party is not bound to confess or deny, in terms of the act of sederunt, 1st February 1715, where the subject claimed is an account prescribed *quoad modum probandi*.