

he might lose the opportunity of this fleet. THE LORDS on this specialty dispensed with its being read in the minute-book; though regularly nothing should be extracted till 24 hours after it has been read there, to give due advertisement to all parties concerned.

*Fol. Dic. v. 2. p. 191. Fountainball, v. 2. p. 577.*

No 193.

1749. February.

HAY and ROSE against DRUMMOND.

A PROCESS being brought before the Admiral, at the instance of Hay of Hops and Rose of Blackhill, executors of Andrew Ross, cloathier in Musselburgh, against William Drummond of Balhadie, to account for the profits of a copartnery trade, in which there occurred a variety of points to be cleared by Balhadie's oath; and as he was now in France, and for certain reasons found it not convenient, perhaps not safe, to come home; a commission was therefore agreed to for his deponing at Boulogne. But, as in a case of that sort, it was impracticable to engross every interrogatory in the commission, the pursuer qualified his consent to the commission with this provision, "That a proper person should be sent to Boulogne on Balhadie's charges to examine him." And accordingly, in these terms the commission was granted by the Judge, the said expense not exceeding L. 25 Sterling.

This was complained of by bill of advocacy, on this ground, that as a commission is never refused to a man when necessarily absent, so there is no cause for loading him with so unusual a thing as the expense of sending a person to examine him, and which in all events should be reserved till the event of the cause, that if he should depone negative, these expenses might lie on the pursuer.

THE LORDS "refused the bill, and found, that the expense should lie on Balhadie, depone what he will."

The thing is new, but not unreasonable; for whatever be the cause of a defender's absence, it is a favour to indulge him with a commission. And where the case is of that nature that he cannot be examined to purpose, but where a person known to the affair is present, it is just he bear the expense, which his not attending in Court occasions, and which in strict law he is bound to do.

*Fol. Dic. v. 4. p. 150. Kilkerran, (PROCESS.) No 10. p. 437.*

No 194.

Who liable to the expense of a commission?