

No 119. it appeared, from the proof, it consisted with their knowledge, they might be liable in expenses.

THE LORDS found the account not probable otherwise than by the pursuer's oath.

*C. Home, No 91. p. 143.*

1750. December 1. MAXWELL against the TRUSTEES of CHALMERS.

No 120.

A party, against whom decree has been obtained as holden confessed, may be reponed on paying expenses.

AGNES and Ann Maxwells being pursued by the Trustees of Chalmers of Fingland, upon the passive titles, as representing certain of their predecessors, to make payment of certain debts due to Chalmers of Fingland, to which the pursuers had right by disposition from him; the passive title insisted on was, as charged to enter heir; and a day being taken for them to renounce, and that day again prorogated; and, last of all, a petition to the Lords refused, craving that the extract of the circumduction pronounced on the 21st February might be superseded till the 5th June last; and they having after all failed to renounce; the circumduction was extracted, and became a decree *in foro*.

Of this decree a bill of suspension was now presented, wherein it was *alleged*, That the complainers had never employed either the agent or procurator who had appeared for them, which was offered to be proved by their oaths; an allegiance which could not have been listened to, however such procurator and agent upon their acknowledgements might have been subjected to the complainer's damages. But another ground occurred to the Lords, namely, that in all decrees, however *in foro*, proceeding upon being held as confest, parties are reponed upon payment of the expense; and as there was no doubt of the complainer's now giving in a renunciation, it was remitted to the Lord Ordinary to pass the bill, upon caution.

*Kilkerran, (PROCESS.) No 12. p. 438.*

1797. June 20.

THOMAS GILMOUR against The REPRESENTATIVES of Captain MATHEW STEWART.

No 121.

A defender in an inferior court, to whose oath the libel had been referred, having been held as confessed for not appearing to depone, and

THOMAS GILMOUR, in June 1793, brought an action before the Sheriff of Ayr, against Captain Mathew Stewart, for payment of L. 1 : 13 : 3, being the amount of an account for tea and sugar, alleged to have been furnished to Jane Stewart, the defender's sister, in the years 1781 and 1782, at which period she kept his house.

Gilmour produced orders in Miss Stewart's hand-writing, but without dates, for the quantities of tea and sugar stated in the account. Miss Stewart had