

without a tack, it is his own fault. The case of *Baron* was upon other principles: *there*, there was writing,—informal but homologated; *here*, there is no evidence of writing,—no proof of *rei interventus*. The master is not bound by the judicial rental,—the whole resolves into a verbal agreement, and there is still *locus pœnitentiæ*.

On the 5th August 1766, the Lords sustained the reasons of suspension. On the 25th November 1766, they found the letters orderly proceeded. On the 5th December 1766, they refused a petition from the tenant and adhered [to Lord Kennet's interlocutor,] but remitted to the Ordinary to hear parties, as to the claim of meliorations made by the tenant.

*For the Charger, C. Gordon. Alt. R. Blair.*

1766. December 17. GEORGE BAILLIE *against* MRS JEAN ROSS.

PROCESS,—FORTHCOMING.

A Decreet of forthcoming was reduced, because the circumduction of the term against the arrestee proceeded on an Act and Commission, in which the blanks were not filled up, and was obtained when the process was asleep.

[*Faculty Collection, IV. 85; Dictionary, 12,210.*]

JUSTICE-CLERK. If this were to be held a decret *in foro*, no man, however rich, could be sure of leaving a sixpence to his family.

COALSTON. This is a decret *in foro*, because a lawyer appeared, and his gown is his warrant. Lawyers and agents ought to be cautious how they appear: but here two plain nullities appear in the decret. *1st*, The commissioner left blank, and no judge-ordinary substituted. *2d*, Circumduction taken when the process was sleeping. The Act of Parliament occasioned by the surcease of justice has no place here.

AUCHINLECK. We have good nullities, and therefore I am for sustaining them.

PRESIDENT. This is a catch altogether. A single appearance of a lawyer taking a day without making a defence, certainly does not imply a decret *in foro*.

The Lords sustained the reasons of reduction and defences, found expenses due, and modified them to L.12:12s.