

Lord Ordinary perceived his mistake, and observing, that a declinator lay against him, he recalled his interlocutor, and declined judging in it any further; reserving to the parties to apply to the Court for the nomination of another Ordinary.

They did so; and thereupon the Lords, “In respect of the particular circumstances of this case, remitted to the Ordinary on the Bills to recal the whole former procedure in the cause, and then to proceed in it further, and to do as he should see just,” (2d December 1774.)

The Lords thought that both of Lord Hailes’ interlocutors were void; and therefore they worded their interlocutor and remit as above.

DECREETS.

1772. July .

BOYD *against* BOYD.

MANY disputes have happened,—whether a decret is to be considered as a decret *in foro* or decret in absence. The regulations 1672, § 19, declare, That, where *there is compearance* for a party, and defences proponed, the decret shall be considered as a decret *in foro*. The effect of which is, to bar suspension or reduction on grounds competent but omitted. Bare compearance therefore, without proponing defences, does not make a decret a decret *in foro*. So it was argued, July 1772, Boyd *against* Boyd,—wherein a decret in absence having been pronounced, the defender gave in several representations against it, not setting forth peremptory defences *in causa*, but craving to be heard upon them.

A stronger case occurred :

CRAWFORD of AUCHNAMES *against* BAIRD and LAUDER.

IN this case, decret in absence having been pronounced against Baird and Lauder, they represented, craving to be heard, and at last gave in a representation on the merits; but failing to compear, when called, to support their representation, the Ordinary, Lord Kaimes, adhered to his former interlocutor. A suspension of this decret was passed, after a good deal of struggle, and, upon discussion, redress was given.

MINISTER and KIRK-SESSION of BORROWSTOWNNESS.

WHERE a decret is extracted irregularly, or disconform to the warrants, redress may be obtained by a summary complaint; and, upon cause shown, the

Lords will recal it. But where a decret is extracted regularly, and the irregularity lies in the charge, the remedy is by suspension, and a complaint is not competent. Fount. Vol. I. page 228, *Burnet*, 24th November 1764.

1765. August 7. M·VICAR and FACTRIX *against* MACALLUM and KER.

A DECRET was extracted, *anno* 1697, disconform to the warrants. It was extracted against a person not in the process, instead of another, who was truly in it. The warrants, and the extractor's erroneous scroll, were lodged in the laigh Parliament House: a new extract was demanded: the keeper gave one conform to the erroneous scroll,—but the Lords, on a summary petition, ordered him to give one conform to the warrants.

1765. June 20. BRAIDWOOD *against* WALKER.

BRAIDWOOD, candlemaker, pursued the payment of an account of candles, furnished to the house of Richard Walker, vintner. The account was attested by Mrs Walker. The pursuit was against her, and decret went accordingly; though, as she was *vestita viro*, it was understood not to affect her person, but only the goods under her *prepositura*; but no exception was made in the interlocutor. It was said she could suspend, so far as necessary, to preserve her personal liberty; but it would have been better to have added this quality to the interlocutor, "Not to affect her person, but the goods under her *prepositura*."

The late Lord Elchies was of opinion, that all warrants granted by the Lords, even warrants of commitment, to be executed at a distance, ought to be extracted. It was his opinion, that the clerk's subscription was the proper evidence of the mind and language of the Court. This is safest also for the messenger, who might otherways proceed upon an interlocutor altered by the Court. Whereas the extract ascertains him of the final warrant he is bound to obey.

On a petition, the Lords allowed a decret to be wrote on parchment and sealed with the seal of the Court, 29th March 1683, p. 230, Fount. Vol. I.