

presumption might be overbalanced by stronger contrary presumptions; and that if, in fact, the special charge was produced, this was sufficient, though omitted to be so said in the extract of the decret.

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1773. December 15. MISS BRUCE *against* CARSTAIRS.

A PARTY who compears in process, and propones peremptory defences, cannot withdraw his appearance: any decret pronounced against him is understood to be a decret *in foro*. See regulations 1672. The point occurred in the case betwixt *Miss Bruce of Arnot* and *Mr Bruce Carstairs*. At giving expenses, by the Ordinary, the procurators for Mr Carstairs were absent, neither did they represent within the representing days. But they represented after these days were run; whereupon Lord Kaims, Ordinary, recalled his decreture for expenses, holding it to be a decret in absence. But the Lords were of a different opinion, and held it to be a decret *in foro*, (15th December 1773.) At the same time, though they held the decret fast in point of form, yet they modified the *quantum* of the expenses very low, (for these had not been modified by the Ordinary;) being convinced that the Ordinary ought not to have given any.

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1777. January 17. JOHN WALSH *against* CREDITORS of MR ROBERT M'INTOSH.

JOHN Walsh, Esq. having advanced, from time to time, to Mr Robert MacIntosh, advocate, a sum betwixt L.25,000 and L.30,000, to be laid out in purchasing in certain debts of the York Building Company, took from Mr M'Intosh receipts for these sums on loose slips of paper, which he produced in Chancery, in a suit at his instance against Mr M'Intosh.

Afterwards, finding that Mr M'Intosh had an estate in Scotland, he was advised to bring a constitution of the debt against Mr M'Intosh before the Court of Session, wherein he libelled upon these receipts; and the summons was executed edictally. When called, Mr M'Intosh, in absence, was held as confessed, and decret went out against him. But neither at pronouncing decret, nor at extracting, were the receipts produced in the clerk's hands: not only for the reason already given, *viz.* that they were produced in the suit in Chancery, but that Mr Walsh was shy to trust them in Scotland, for fear of accidents, the sum being great.

The decret of constitution being extracted, adjudication followed; and, in the process of adjudication, nothing was produced except the decret of constitution.

Upon this interest Mr Walsh, being infeft, by charter and seasine, on Mr M'Intosh's estate, brought a process of ranking and sale thereof against him and his Creditors; and, in the ranking, it was objected to the decret of consti-

tution, That the grounds of debt were not produced ; so consequently it was void and null : and if it was void and null, so also was the decret of adjudication which proceeded upon it, and in obtaining whereof nothing had been produced as a ground except the decret of constitution.

ANSWERED, as to the decret of constitution,—The grounds of debt were all libelled on : the debtor was cited edictally : he was held as confessed, and decret was pronounced. And now, when challenged, the grounds of debt themselves were produced to show, in a competition, that the debt was truly due. The decret in absence was by no means void and null : it was only liable to challenge, unless supported ; which, in the present case, it clearly was.

And as to the adjudication,—Where an adjudication proceeds upon a constitution, no other ground is necessary to be produced, except the decret of constitution. The grounds of debt may be produced *ex super abundantia* ; but they are not necessary.

The Lords repelled the objection in both its parts.

1777. *February 27.* RANKEN and PIRNIE *against* COWAN.

WHEN a petition, reclaiming against an Ordinary's interlocutor, is advised, the cause returns to the Ordinary without the necessity of any express remit ; such sometimes is added *ex super abundantia*, but it is not necessary. It is otherwise in a report, where the Ordinary makes avizandum to the Lords : in that case he is exauctorated, and can proceed no further, without a remit back again. As to expenses ; if the cause is before the Court, by petition and answers, these may be sought, and often are sought, at the time of advising the petition and answers ; but, if not then sought, may be demanded afterwards before the Ordinary, because the cause returns to him of itself without any remit, and may be further proceeded in. The Lords were unanimously of this opinion, in a cause this day before them, *The Tacksmen of the Town of Edinburgh, their Impost, against Cowan*. Cowan, the suspender, having prevailed before the Ordinary, the Tacksmen reclaimed ; but, upon advising petition and answers, the Lords adhered. At this time no motion was made for expenses, nor any thing said concerning them. Cowan afterwards enrolled the cause before the Ordinary, and craved expenses ; the Ordinary found him entitled thereto. The chargers reclaimed, and maintained 1st, That this was incompetent ; 2do, That, in justice, no expenses were due. The Lords repelled the first, but they complied with the last, and found the suspender entitled to no expenses.

1777. *June* . PETITIONERS in the Case PARISH, &c. *against* KHONES.

DECRET having been extracted in the case mentioned, (under Commission of Bankruptcy in England, p. ,) Parish, &c. against Khones ; a petition was