

decreet being in absence, the defunct using all diligence to be reponed, and having, upon his death-bed, before ministers and gentlemen, solemnly cleared himself, by oath, of any such intromission, and thereupon reduction of the decreet being now raised, the same ought to be reduced. It was *answered*, That albeit the Lords, upon such a ground, might repone a party to his oath, yet this party being dead, and the mean of probation perished, he cannot be reponed; and, in fortification of the decreet, it was offered to be proved by one witness that saw the defunct find the money, and intromit therewith, though he knew not the quantity.

THE LORDS, considering the decreet was in absence, and suspended *de recenti*, and that the defunct had sworn he intromitted with no such money, they turned the decreet into a libel.

Fol. Dic. v. 2. p. 185. Stair, v. 2., p. 121.

1673. June 20. M'KEWAR against VERNOR.

IN a pursuit at M'Kewar's instance, as assignee to a bond made by Vernor, for payment of the sum therein contained, it being *alleged*, That the assignation was to the behoof of the cedent, which was offered to be proved by his oath, and that it was offered to be proved, by the cedent's oath, that he was debtor in as much; whereupon he was holden as confessed, because he was not personally apprehended the time of the citation; in which case, only decreets can be given holding a party *pro confesso*; it was *answered*, That, the time of the citation, the cedent was out of the country, and was cited upon sixty days; so that it was impossible to cite him personally apprehended. THE LORDS did sustain the answer, and ordained the decreet to be extracted; seeing, if it should be otherwise, it were an easy way for creditors to assign, albeit satisfied, and immediately to go out of the country, whereby no probation could be had by their oath for payment of the debt.

Fol. Dic. v. 2. p. 183. Gosford, MS. No 595. p. 340.

* * Stair's report of this case (Somerville against ———) is No 5. p. 8325. *voce* LITIGIOUS.

1675. February 6. IRVING against CARRUTHERS.

IRVING having obtained decreet against Carruthers for making forthcoming of his rent, arrested for his master's debt, and the same being suspended, and Carruthers being first examined, and having deponed upon what rent he paid, and what rent he was due, and having been ordained to be re-examined on his

No 103.

No 104.
Parties out of the country may be held *pro confesso* upon a citation at the market cross of Edinburgh.

No 105.
Holden as contest, sustained in a forthcoming, where the arrestee de-