

No 337.

tion of damages, and granting warrant to and ordaining the keeper of the record to transmit the warrants of the extracted decree to the clerk of the process.

Lord Ordinary, *Craig.*Act. Solicitor-General *Blair.*Agent, *J. Keay, W. S.*Alt. *H. Erskine.*Agent, *H. Davidson, W. S.*Clerk, *Home.*

F.

Fac. Col. No 162. p. 365.

* * It was found, (Douglas petitioner, March 7: 1753.) that informations must be engrossed in the extracted decree. The case is No 86. p. 12020.

SECT. XVIII.

Decrees in Absence.

1681. *January 22.*

The EARL of DUNDONALD *against* The LAIRD of Dunlop and his Creditors.

No 338.

THE Earl of Dundonnald being infeft in an annualrent out of the Laird of Dunlop's estate, raises a summons of pointing of the ground, which being called in the Outer-house, in presence of the Ordinary, Dunlop opposed not, but consented to a decret; but his Creditors *alleged*, That they ought to see the process, and it ought to be seen, and returned, and enrolled; and that any party may stop a decret in absence, and crave to see it. It was *answered*, That albeit decreets passing in course by the clerk may be stopped by any desiring to see, yet this decret was pronounced by the Ordinary, and therefore none but a party called can stop the same, unless they produce an interest, upon which the Ordinary must hear that party, if it be a competent interest, whereby the producer is found *legitimus contradictor*.

Which the LORDS sustained.

*Stair, v. 2. p. 840.*1692. *December 29.*

PHILP of Almerycloss *against* OGILVY of Innerquharity.

No 339.

THE LORDS were divided on this question, if it was to be reputed a decret *in foro* where a party appeared, and produced an interest, as a ground of competition on the subject in controversy, but afterwards was absent, and proponed nothing upon his interest; so that compearing in this manner, and finding his

right posterior, he might withdraw, and then vex men with new processes; but the plurality found it a decret *in foro*. Yet it could not be accounted a decret *in foro contradictorio*, no defence being proponed, as the act of regulation 1672 requires.

No 339.

Fol. Dic. v. 2 p. 205. Fountainhall, v. 1. p. 540.

1701. December 17.

The CHIRURGEONS and APOTHECARIES of GLASGOW against ANDREW REID Chirurgeon there.

KING JAMES VI. by his gift in 1599, erects the Chirurgeons of Glasgow into a corporation or faculty, with sundry privileges, and particularly to visit all drugs, to examine and try entrants, and, if qualified, to admit them, and to fine any contumacious practisers of medicine or pharmacy. By an act of this fraternity it is declared, no man shall be admitted, unless he have either served his apprenticeship with a freeman-master, or else have married a freeman's daughter. Andrew Reid having come from Ireland, and set up at Glasgow, they fine him in L. 120 for three several contraventions and encroachments: He suspends, and at calling, his advocate produces his suspension, but the chargers do not then insist; whereon he gives in a bill to the Lords, representing, that the chargers drew back, therefore craved the Lords would authorise him *medio tempore* during the dependance to exerce his employment; which bill the LORDS refusing, the decret of suspension was extracted; and he being of new charged thereon, suspends again; at the discussing whereof, it was *alleged* for the chargers, that it was a decret *in foro contradictorio*, and so he could not be reponed to his reasons, viz. that he was willing to undergo a trial, and, if insufficient, to be rejected. *Answered*, There was no defence nor debate made for him in all the decret, and so it could not be called *in foro*. *Replied*, His advocate compares, and produces the suspension; *2do*, He gives in a bill to the Lords. *Duplicated*, That by the act of regulations ratified in Parliament 1672, no decret is to be reputed *in foro*, but where comparance is made for the party, and defences proponed; but here there is no sort of defence proponed, but allenary the suspension produced, without saying any thing, and a bill given in, not dipping *in causa*, but only craving liberty to practise in the mean time. The LORDS found this was not a decret *in foro*, and therefore reponed him.

No 340.
A decret of suspension was not found to be *in foro*, tho' there was appearance for the suspender and the suspension produced, but no debate, and tho' the suspender craved something to be done, not dipping in the cause.

Fol. Dic. v. 2. p. 205. Fountainhall, v. 2. p. 129.