

fit, whether for sale, or for their proper use, and in effect wives are trusted by their husbands, and *præpositæ* for that particular management. And as to the *second*, It is the ordinary practice to lead probation, even in absence of the parties, in small scuffles where bloodwits happen.

No 388.

“THE LORDS found the husband liable; but suspended the decret for the bloodwit; and found that probation ought not to be led in absence; and that the Bailie ought only to have unlauded the suspender, and granted a warrant to apprehend him until he found caution.”

Fol. Dic. v. 2. p. 210. Dalrymple, No 149. p. 205.

S E C T. XXIII.

What Actions competent.

1662. *January 24.* LAIRD OF RENTOUN *against* MR MARK KERR.

THE LAIRD of Rentoun having obtained decret before the Commissaries of Berwick against Mr Mark Kerr, compearing for three chalders of victual of teind, Mr Mark suspends upon iniquity; because he having proponed a relevant defence, that he ought to have allowance of the annuity which he had paid, which affected the teinds, it was repelled. The charger *answered, Non relevat*, by way of suspension, without there were a reduction. The suspender *answered*, The reason was instantly verified, by inspection of the decret.

THE LORDS found the reason not competent by suspension without reduction.

Stair, v. 1. p. 87.

No 389.
Not competent to suspend a decree upon the head of iniquity.

1750. *July 26.* BUCHANAN *against* URE.

THERE being an avocation sought of a cause depending before the Sheriff of Stirling, betwixt George Buchanan, tenant in Dunbrock, and James Ure, tenant in Haltoun of Balgair, for a less sum than L. 12 Sterling; the Lord Ordinary had remitted with an instruction; but the matter being brought by bill and answers before the Lords, they were of opinion, this cause could neither be

No 390.
A cause below L. 12 Sterling cannot be advocated, nor any instruction given in the remit.

No 390. advocated, nor any instruction given therein; but remitted to the Sheriff to proceed as he should see cause.

Act. J. Grant.

Alt. Bruce.

D. Falconer, v. 2. No 154. p. 178.

** Kilkerran's report of this case is No 18. p. 374. *voce* ADVOCATION.

1798. June 6.

DAVID STEWART *against* The YORK-BUILDINGS COMPANY.

No 391.

Decree of constitution pronounced for a random sum, in name of damages, reserving objections *contra executionem*.

THE Creditors of the York-Buildings Company having prevailed in a reduction of a lease granted by the Managers of the Company, and it having afterwards come to be understood, that the Company would have a reversion, after paying their debts, an action of damages was brought against them by the Representative of the lessee, founded on a clause of absolute warrandice contained in the lease.

The pursuer died during the dependence of the action, which was insisted in by David Stewart, as his assignee. After the action had been some years in Court, the LORD ORDINARY "circumduced the term against the defenders," for not reporting a diligence which had been granted them, for recovering the decree of reduction, and "decerned against the defenders, conform to the conclusions of the libel; reserving to the defenders all objections *contra executionem*, and answers thereto, as accords."

At moving a petition against this interlocutor, a doubt was expressed of the competency of pronouncing decree of constitution in these terms, which, it was observed, was a very different case from allowing an adjudication, reserving objections, where the claim has been previously constituted, and can be set aside only by suspension or reduction.

But, on advising the petition, with answers, in which parties confined themselves chiefly to the relevancy of the claim of damages, it was observed, that similar decrees had often been pronounced by the Court, and that the present would enable Mr Stewart to adjudge, if not in payment, at least in security, of his claim; 7th March 1794, Creditors of Macneil against Saddler, No 35. p. 122.

THE LORDS, "In respect that, by the interlocutor reclaimed against, nothing is determined with regard either to the validity of the claim of damages, or to the amount of such claim," "adhered."

Lord Ordinary, Polkemmet.

Act. Solicitor-General Blair, Neil Fergusson.

Alt. Lord Advocate Dundas, John Clerk, et alii.

Clerk, Gordon.

D. D.

Fac. Col. No. 78. p. 183.