

No. 2. cree of reduction, but at the same time they saw no reason to award expenses of process, which this is an indirect attempt to obtain from the creditors.

The debtor is not liable to warrant against unsuccessful attempts to evict. The propriety of the decision in the case of Allardyce may be doubted, if the Court meant to go further than to allow the creditor to adjudge for the penalty, reserving the effect of the adjudication for after consideration.

The Court, by a considerable majority, repelled the pursuer's claim for the penalty, and found the creditors entitled to the expense of extract. See PENALTY.

Lord Ordinary, *Craig*.
Clerk, *Home*.

Act. *T. W. Baird*.

Alt. *Craigie, Williamson*.

D.

Fac. Coll. No. 182. p. 418.

1803. *May 21.* CAMPBELL and COMPANY *against* MACKENZIE.

No. 3.

It is not competent, after a case has been decided by the Inner-House upon a petition and answers, and no expenses given, to claim expenses from the Lord Ordinary.

This case was decided upon its merits, by advising a reclaiming petition, with answers, upon the 18th May 1803, at which time no motion for expenses was made. The cause was afterward enrolled before the Lord Ordinary, for the purpose of obtaining them; and his Lordship stated to the Court the general point of the competency of this demand, which was made to him after the cause had been finally decided in the Inner House.

The Court were of opinion, that when a petition is refused without answers, the cause may be enrolled before the Lord Ordinary, for the purpose of obtaining the expenses; but that when a cause is advised upon a petition and answers, such demand for expenses should be made when the cause is before the Court. They therefore instructed the Lord Ordinary to refuse expenses in this case, and signified that this rule should be adopted in similar cases.

Lord Ordinary, *Hermand*.
Alt. *Connell*.

Act. *Ross*.
Agent, *M. Montgomerie*.

Agent, *J. Campbell, tertius*, *W. S.*
Clerk, *Menzies*.

J.

Fac. Coll. No. 104 p. 231.

1808. *February 6.*

MESSRS. JOHN PRINGLE, &c. Principal Clerks of Session, *against* DAVID BLACK and Others, Heritors, and the Rev. MR. SPENCE and the KIRK SESSION of the Parish of Orwell.

No. 4.

In a process the pursuer and defender are conjunctly

In the parish of Orwell there was no kirk-session; and the fund for the maintenance of the poor had always been under the exclusive administration of the clergyman.