

stantly to protest for adjudication; Craig, B. 3. D. 2. § 23.; Stair, B. 3. Tit. 2. § 46. and 47.; Erskine, B. 2. Tit. 12. § 47.

The supporting of the dispensation in question will have the equitable effect of admitting an onerous creditor to a share of his debtor's funds, and will be agreeable to the practice of Court in other cases, where dispatch is required, as in the appointment of interim Sheriffs, in acts and commissions for proofs, and in warrants for personal protections.

THE LORD ORDINARY "repelled the objection."

On considering a reclaiming petition and answers, memorials were ordered; on advising which, it was

*Observed* on the Bench; Although the Court are not perhaps bound to adhere so rigidly to an act of sederunt as to an act of Parliament, where equity suggests the propriety of deviating from it, yet it would be dangerous to yield too far to this doctrine, especially in competitions of creditors; but, as a decree *cognitionis causa* contains no personal conclusion, this case does not fall under the spirit of the act of sederunt, the sole object of which was, to give the unsuccessful party time to apply for an alteration of the judgment before the decree is extracted.

One judge thought the decree came under the words of the act of sederunt, and that as dispensing with the minute book would affect the interest of the other creditors, the Court were not entitled to interfere. The only cases, in his Lordship's opinion, in which they could do so with effect, were those where no third party was in any way hurt by the dispensation.

THE COURT, with only one dissenting voice, "adhered."

Lord Ordinary, *Dunsinnan.*

For the Common Agent, *Geo. Fergusson, M. Ross.*

*Alt. Moribland.*

Clerk, *Pringle.*

R. D.

*Fol. Dic. v. 4. p. 152. Fac. Col. No 160. p. 366.*

1804. May 22. EARL OF KINNOUL and OTHERS, Petitioners.

ON moving a petition to apply the judgment in the House of Lords, dismissing the appeal in the case of Earl of Kinnoul against Hunter, *voce* SALMON FISHING, a difficulty occurred, how far the Court could now proceed to determine the quantum of damages, notwithstanding of a reservation to be heard upon that subject before the Lord Ordinary, contained in the interlocutor appealed from; for, in extracting the proceedings for the purpose of the appeal, the grand decerniture had been thrown in, as if it had been a final extract.

This difficulty was removed, by a deliverance recalling the extract of the decree in question, to the effect of allowing the parties to be heard on the ques-

No 336.

No 337.

If, in the extract of a process for the purpose of appeal, the grand decerniture has been inserted, the Court, on the appeal being dismissed, cannot proceed to determine the rest of the cause, unless it sees fit to recall the extract, to the effect of allowing the parties to proceed.

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 poinding 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