

No 81.

1682. *March.* PRESTONGRANGE *against* Sir JOHN SINCLAIR of Longformacus.

FOUND, That a pursuer ought to prove his libel, though not expressly denied by the defender; and a decret was turned into a libel, because the libel on which it proceeded was not proved, albeit the defender did not positively deny it in his defence, seeing his procurators did not expressly acknowledge it; and the *ratio rationis* was because the defence denying the libel is a thing of course, which clerks often forget to mark, or the defender's procurator forgets to make.

Fol. Dic. v. 2. p. 182. Harcarse, (DECREETS.) No 400. p. 106.

No 82.

1683. *February.*CREDITORS of BAILIE MARJORIBANKS *against* ALEXANDER CHAPLAND.

FOUND, That a charger could not, immediately after the letters were found orderly proceeded by discussing of the charge upon a bill of suspension, denounce; but that the decret ought first to be put up in the minute-book and extracted as if the suspension had passed the signet; and here the suspender died some few hours after the denunciation, which was upon the same day that the decret was pronounced.

Harcarse, (HORNING.) No 61. p. 142.

* * * Sir P. Home reports this case :

UPON a complaint at the instance of ——— Brown and the Creditors of the deceased ——— Marjoribanks, late Bailie of Edinburgh, against Alexander Chapland, writer, the LORDS found, that Bailie Marjoribanks having suspended the charge of horning upon a bond, albeit the letters were found orderly proceeded, yet the denunciation upon the former charge was found unwarrantable, being before the deed of suspension was read in the minute-book, and extracted.

Sir P. Home, MS. No 332.

No 83.

The pursuer must prove his libel, and it is not sufficient that the defender neglect to deny the libel.

1708. *December 28.* PHILP *against* MENZIES of Pitfoddels.

DAVID PHILP being tenant to Gilbert Menzies of Pitfoddels, in a half-net coble-fishing on the water of Dee, and also some acres of land, he pursues him before his own baron-court, and takes a decret against him for two barrels and one half of salmon, at L. 50 Scots the barrel, and for his damage in riving out and impoverishing his land, cognosced by the verdict of the Birlawmen;