

No 29.

1682. *February.*BROWN *against* BURNET.

IN the suspension of a charge upon a charter-party, registrated in the books of Session, the LORDS found, That though the Admiral was the privative judge in the first instance, the suspension was a second instance, and there was no necessity to registrate the contract in the Admiral's books, seeing he could not suspend the charge. And the first instance is to be understood of libelled summons, and not of registration, which is a decret of consent.

*Fol. Dic. v. I. p. 494. Harcarse, (SUSPENSION.) No 944. p. 265.*

No 30.

A party proponed declinator of an inferior judge, which being repelled, he gave in other defences. Found, that he did not thereby pass from the declinator.

1696. *July 29.*Sir JOHN SHAW *against* Mr JOHN BUCHANAN.

CROGERIG reported Sir John Shaw of Greenock, against Mr John Buchanan and the Creditors of Clackmannan, for exhibition of an interdiction of Shaw of Sauchie, to sundry of his friends. *Alleged,* The decret of exhibition obtained against him before the Commissaries of Edinburgh, was *ipso jure* null, the affair being nowise consistorial; and he having proponed the declinature, they unjustly repelled it and proceeded. *Answered;* You have prorogated and homologated the jurisdiction by proponing other defences *in causa.* THE LORDS found this was no passing from the declinature of the incompetency of the Court; for what can a defender do, but adhering to his declinature, propone his other defences, when the judge will proceed? Though some were of the mind, that he should, after that injustice done him, either advocate or be absent. Then Greenock pressed that *ante omnia*, his decret being now turned into a libel, the paper should be put in the clerk's hands, lest they die *medio tempore*, or it miscarry. THE LORDS refused this, as contrary to form, *hoc ordine*, till they were heard against his title.

*Fol. Dic. v. I. p. 494. Fountainball, v. I. p. 730.*

\* \* \* Prorogation of Jurisdiction of Justices of the Peace, see Div. XI.