

of the former. Abraham Rowan, the son of James's elder brother, and heir of conquest, brought a reduction of these deeds, and contended, that he had right to this debt, because the first disposition was revoked by the last; and the last was reducible at his instance, *ex capite lecti*. The defence chiefly insisted on was, that the first deed was not expressly revoked by the last; and therefore, although the last deed should be taken out of the way, the first would still subsist; "and so the Lords found, (22d November 1775;) they held a virtual revocation of the first not sufficient, and assoilyied the defenders." And the decision was well founded; for, if a death-bed deed contains both a disposition and revocation, there may be some reason for maintaining, that, though the disposition be set aside, the revocation may subsist; because they are distinct; *et utile per inutile non vitiatur*; but, when the death-bed deed contains no revocation, and is cut down on the head of death-bed, it cannot be maintained, with plausibility, that it ought to subsist as a revocation.

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## DECLINATOR.

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1776. July 26. WILLIAM DALGAIKNS *against* ———.

WILLIAM Dalgairns, tacksman of the Mills of Kiethick, belonging to the Lord Privy Seal, pursued several of the neighbouring tenants for abstracted multures. The process came, by suspension of a sentence of the Sheriff of Perth, before Lord Stonefield, who declined himself on account of his connexion with the Privy Seal, proprietor of the mill. The Privy Seal was no party called to the process. The Lords, 26th July 1776, repelled the declinator as not a legal one.

Being related to either of the parties, as an uncle, by affinity, is no declinator. Repelled in the case of *Lord Coalston* as uncle to *Mrs Caddell*. In the case of *Lord Gardenstone*, in the process *Irvine of Drum* against *Earl of Aberdeen*, June 1776: Irvine had married his niece. And in the case of *Lord Covington*, in the process *Moray of Abercairney* against *M'Namara*, 27th July 1776.

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1774. December 2. DOUGLAS, HERON, and COMPANY *against* EARL of GALLOWAY.

A CAUSE, at the instance of Douglas, Heron, and Company against the Earl of Galloway, having come in course before Lord Hailes, Ordinary in the Outer-house; his Lordship, not adverting that Sir Adam Ferguson, his brother-in-law, was a known member of that Company, assoilyied the defender, found expenses due, and decerned, (23d July 1774.) A representation being given in, the

Lord Ordinary perceived his mistake, and observing, that a declinator lay against him, he recalled his interlocutor, and declined judging in it any further; reserving to the parties to apply to the Court for the nomination of another Ordinary.

They did so; and thereupon the Lords, “In respect of the particular circumstances of this case, remitted to the Ordinary on the Bills to recal the whole former procedure in the cause, and then to proceed in it further, and to do as he should see just,” (2d December 1774.)

The Lords thought that both of Lord Hailes’ interlocutors were void; and therefore they worded their interlocutor and remit as above.

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## DECREETS.

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1772. July .

BOYD *against* BOYD.

MANY disputes have happened,—whether a decret is to be considered as a decret *in foro* or decret in absence. The regulations 1672, § 19, declare, That, where *there is compearance* for a party, and defences proponed, the decret shall be considered as a decret *in foro*. The effect of which is, to bar suspension or reduction on grounds competent but omitted. Bare compearance therefore, without proponing defences, does not make a decret a decret *in foro*. So it was argued, July 1772, Boyd *against* Boyd,—wherein a decret in absence having been pronounced, the defender gave in several representations against it, not setting forth peremptory defences *in causa*, but craving to be heard upon them.

A stronger case occurred :

CRAWFORD of AUCHNAMES *against* BAIRD and LAUDER.

IN this case, decret in absence having been pronounced against Baird and Lauder, they represented, craving to be heard, and at last gave in a representation on the merits; but failing to compear, when called, to support their representation, the Ordinary, Lord Kaimes, adhered to his former interlocutor. A suspension of this decret was passed, after a good deal of struggle, and, upon discussion, redress was given.

MINISTER and KIRK-SESSION of BORROWSTOWNNESS.

WHERE a decret is extracted irregularly, or disconform to the warrants, redress may be obtained by a summary complaint; and, upon cause shown, the