

tution, That the grounds of debt were not produced ; so consequently it was void and null : and if it was void and null, so also was the decret of adjudication which proceeded upon it, and in obtaining whereof nothing had been produced as a ground except the decret of constitution.

ANSWERED, as to the decret of constitution,—The grounds of debt were all libelled on : the debtor was cited edictally : he was held as confessed, and decret was pronounced. And now, when challenged, the grounds of debt themselves were produced to show, in a competition, that the debt was truly due. The decret in absence was by no means void and null : it was only liable to challenge, unless supported ; which, in the present case, it clearly was.

And as to the adjudication,—Where an adjudication proceeds upon a constitution, no other ground is necessary to be produced, except the decret of constitution. The grounds of debt may be produced *ex super abundantia* ; but they are not necessary.

The Lords repelled the objection in both its parts.

1777. *February 27.* RANKEN and PIRNIE *against* COWAN.

WHEN a petition, reclaiming against an Ordinary's interlocutor, is advised, the cause returns to the Ordinary without the necessity of any express remit ; such sometimes is added *ex super abundantia*, but it is not necessary. It is otherwise in a report, where the Ordinary makes avizandum to the Lords : in that case he is exauctorated, and can proceed no further, without a remit back again. As to expenses ; if the cause is before the Court, by petition and answers, these may be sought, and often are sought, at the time of advising the petition and answers ; but, if not then sought, may be demanded afterwards before the Ordinary, because the cause returns to him of itself without any remit, and may be further proceeded in. The Lords were unanimously of this opinion, in a cause this day before them, *The Tacksmen of the Town of Edinburgh, their Impost, against Cowan*. Cowan, the suspender, having prevailed before the Ordinary, the Tacksmen reclaimed ; but, upon advising petition and answers, the Lords adhered. At this time no motion was made for expenses, nor any thing said concerning them. Cowan afterwards enrolled the cause before the Ordinary, and craved expenses ; the Ordinary found him entitled thereto. The chargers reclaimed, and maintained 1st, That this was incompetent ; 2do, That, in justice, no expenses were due. The Lords repelled the first, but they complied with the last, and found the suspender entitled to no expenses.

1777. *June* . PETITIONERS in the Case PARISH, &c. *against* KHONES.

DECRET having been extracted in the case mentioned, (under Commission of Bankruptcy in England, p. ,) Parish, &c. against Khones ; a petition was