

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

given in, setting forth that at Bremen no decret bore faith, nor was regarded, unless it bore the seal of the Court by which it was pronounced; and therefore praying, that the seal of this Court might be appended to this decret; which the Lords granted, and ordered the seal to be appended accordingly.

See Fount., *29th March* 1683. They had done so also in the Commission for the proof in the *Douglas Cause*, *21st July* 1764.

1778. *February 24.* COLTART of ARREEMING *against* MAXWELL of NITHSDALE, &c.

EXCEPT in the two cases mentioned in the regulations 1695, § 17, unless there is special authority, no partial decret can be extracted; or, in other words, no decret can be extracted in parts. Coltart of Arreeming brought a process of non-entry against Maxwell of Nithsdale, and many other defenders, concluding that they were his vassals, and were liable in full maills from the citation. After a very tedious litigation, the Lords finally found so; *i. e.* That the defenders held their lands of Mr Coltart: but they gave the full maills only from the date of the interlocutor. Two of the defenders reclaimed, and insisted that they were sub-feuars, and held their lands not of Mr Coltart, but of Walker, one of the feuars. The Lords remitted their petition to an Ordinary to hear further upon them. Mr Coltart, having appealed as to the decision on account of the restriction of the maills and duties, applied to the clerks for an extract of the decree against all the defenders except the two who had reclaimed. The clerks offered an extract of interlocutors, but they hesitated to give it out as a decret, the process not being at an end, and the exception of the two reclaiming sub-feuars going to the principal libel. But, upon a petition presented by Mr Coltart, and intimated, the Lords allowed the extracted decret to be given out as to the whole defenders except the two above-mentioned.

1778. *March 6.* MACKAY *against* BARCLAY.

THE Lords, having adhered to the interlocutor of an Ordinary, gave expenses from the date of his interlocutor; which they modified to £5. A petition was given in craving full expenses; but it was found to be incompetent, and contrary to the Act of Sederunt 1715.

The Lords were of the same opinion, *6th March* 1778, *Mackay against Barclay*. They refused the petition as incompetent.