

Which the Lords sustained, and found that his estate might be affected with his debt. *Vol. II, Page 652.*

1678. *December 6.* JOHN LAW *against* MARY SMITH and FERREIS.

JOHN Law having charged, upon a decret of the bailies, against Mary Smith his taverner, and Ferreis, her cautioner; the cautioner suspends, on this reason, That, by the taverner's count-book, written with the charger's hand, there are several sums not allowed to her in this decret: and that, at her removing, she left a quantity of wine, which was gauged by two gaugers, and yet it was referred to the charger's oath, the quantity and value of the wine; which was probable by gaugers.

The charger ANSWERED, That he opposed this decret *in foro*, wherein there is compearance both for the taverner and cautioner, who was not only cited at first, but thereafter cited personally, to hear sentence.

It was REPLIED, That the decret mentions no warrant for the procurator, nor any writ produced for him that might infer warrant.

The Lords admitted the allegiance for the cautioner, unless it were instructed, by his oath, that he gave the procurator warrant to compear for him.

*Vol. II, Page 654.*

1678. *December 11.* GRANT of CORIMONY *against* MACKENZIE of SUDDIE.

[*See page 236.*]

IN a suspension and reduction, at the instance of Mackenzie of Suddie, and Grahame of Drynie, against Grant of Corimony, of a decret of spuilie pronounced by the Lords, upon probation by witnesses, which is before mentioned, debated and decided upon the 30th day of November last: It was further alleged, for Mackenzie of Suddie, that the foresaid decret, as to him, was in absence: for, though the process was returned by Mr Roderick Mackenzie, junior, indefinitely for the defenders, yet it is offered to be proven by his oath, and he hath already given his declaration, that he was never employed nor informed by Suddie; and therefore, being to him as a decret in absence, the Lord sought again to consider the testimonies: by which it would appear, that there was not any thing proven against him.

It was ANSWERED, *1mo.* That when an advocate doth return a process for the defenders, if his oath or declaration may loose that, it would insecure all the decreets *in foro*: for though that hath been sometimes sustained before subscribed returns, when it depends merely upon the clerk to mark for whom advocates compeared, yet it neither hath, nor can be admitted, since advocates have been accustomed to subscribe the returns of processes, and so may, by the return, declare for whom they compear: but when it is indefinite for the defenders, it must be for all or none of them. *2do.* Though the decret had been without all compearance,—the spuilie being proven by witnesses,—there can never be