

1624. January 8. RICHARDSON *against* HAT.

No 323.

THE probation in a baron's decree against his tenant, being only the party's judicial confession of the debt, it not having been referred to oath, the LORDS sustained the decree, because instantly the obtainer of the sentence produced writ verifying the summons, which they found sufficient to maintain the sentence, although the same was not mentioned in the decrees.

Fol. Dic. v. 2. p. 204. Durie.

* * This case is No 214. p. 7496. *voce* JURISDICTION.

1666. July 21. HELEN MILLAR *against* WATSON.

No 324.
A decree of the Court of Session, being *ultra petita*, reduced.

WATSON having obtained a decret before the LORDS, against Hellen Millar, for the rent of some tenements in Glasgow, she suspends, and raises reduction, on these reasons: *imo*, That the decret was null, as being *ultra petita*, in so far as the half of the duties was only libelled, and the whole was decerned: *2do*, That Watson's right was as heir to ——— Watson, who was first wife to Brown, who *stante matrimonio* acquired this right to him, and her, and the one half to her heirs, and the other to his, which was a donation betwixt man and wife, revocable and revoked by the infertment granted to Hellen Millar in liferent, his second wife. It was *answered*, That the decret being *in foro contradictorio*, was irreducible: *2do*, That the right was not granted by the husband to the wife, but acquired from a third party.

THE LORDS reduced the decret, finding that it was visibly extracted by error of the clerks, being *ultra petita*, and therefore sustained the second reason, albeit it was omitted, that it was a donation betwixt man and wife, being acquired to the man and wife; and so presumed to be by his means, which is equivalent as if he had been author, unless that Watson could condescend that it was by the wife's means.

Stair, v. 1. p. 339.

1671. February 22. ALEXANDER PITCAIRN *against* ———.

No 325.
A decree was found null, as without proof, because the writ by which it was to have been proved, though libelled upon and

ALEXANDER PITCAIRN having right by progress to a wadset granted by James Kininmouth to Mr James Gordon, and by him disposed to Sir Archibald Sydsersf, and by him to the pursuer, pursues the tenants for mails and duties, who *alleged*, That Gordon or Sydsersf were satisfied by intromission with the rents, for which they were countable; it was *replied*, That Sir Archibald Sydsersf had obtained declarator of the expiring of the reversion, and was neither count-