

presumption might be overbalanced by stronger contrary presumptions ; and that if, in fact, the special charge was produced, this was sufficient, though omitted to be so said in the extract of the decret.

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1773. December 15. MISS BRUCE *against* CARSTAIRS.

A PARTY who compears in process, and propones peremptory defences, cannot withdraw his appearance : any decret pronounced against him is understood to be a decret *in foro*. See regulations 1672. The point occurred in the case betwixt *Miss Bruce of Arnot* and *Mr Bruce Carstairs*. At giving expenses, by the Ordinary, the procurators for Mr Carstairs were absent, neither did they represent within the representing days. But they represented after these days were run ; whereupon Lord Kaims, Ordinary, recalled his decreture for expenses, holding it to be a decret in absence. But the Lords were of a different opinion, and held it to be a decret *in foro*, (15th December 1773.) At the same time, though they held the decret fast in point of form, yet they modified the *quantum* of the expenses very low, (for these had not been modified by the Ordinary ;) being convinced that the Ordinary ought not to have given any.

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1777. January 17. JOHN WALSH *against* CREDITORS of MR ROBERT M'INTOSH.

JOHN Walsh, Esq. having advanced, from time to time, to Mr Robert Mac-Intosh, advocate, a sum betwixt L.25,000 and L.30,000, to be laid out in purchasing in certain debts of the York Building Company, took from Mr M'Intosh receipts for these sums on loose slips of paper, which he produced in Chancery, in a suit at his instance against Mr M'Intosh.

Afterwards, finding that Mr M'Intosh had an estate in Scotland, he was advised to bring a constitution of the debt against Mr M'Intosh before the Court of Session, wherein he libelled upon these receipts ; and the summons was executed edictally. When called, Mr M'Intosh, in absence, was held as confessed, and decret went out against him. But neither at pronouncing decret, nor at extracting, were the receipts produced in the clerk's hands : not only for the reason already given, *viz.* that they were produced in the suit in Chancery, but that Mr Walsh was shy to trust them in Scotland, for fear of accidents, the sum being great.

The decret of constitution being extracted, adjudication followed ; and, in the process of adjudication, nothing was produced except the decret of constitution.

Upon this interest Mr Walsh, being infeft, by charter and seasine, on Mr M'Intosh's estate, brought a process of ranking and sale thereof against him and his Creditors ; and, in the ranking, it was objected to the decret of consti-