

The Lord do Casely Reduce their own Decrets in all cases where either the Defendant never appeared, or passed from his Comparance before proposing Posthumous titles, albeit they proceed on legal Evidence their Lib. 4 Feb. 1544 and well. As well what they formerly did, even super iudicanda actis, because when the Defendant is absent, the Lord do not so readily consider the cause; as is done in Decrets upon Comparance being there is a Remedy by his suspension and Resignation; and albeit the Libel be found Relevant, the party may Etiam the same by Relevant Answers stain Lib. 4 Feb. 1542

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The Lord may also Reduce their own Decrets in force upon Nullities or Informalities. Because with such the Clerks only are charged as the Effect of their over sight and points Inferring Nullity, fall not under the Comparison of the Lord, but should be Noticed by the parties or their lawyers stain Lib. 4 Feb. 1540. But a Decret of the Lord in force was found not quereable upon an Allegance, that the Clerk had admitted to insert an Interlocutor in the Decret, Referred to the Knowledge of the Lord; seeing that objection was not made Recently, and a Decret could not be altered upon the Memory of any of the Lord except de Recenti 3 Decemb. 1679 *Himes contra Bentons*. The Lord may Reduce their Decrets in force upon Reprobatures, against the liability of the witnesses, and the truth of the Preliminaries in their Examination then protested for; Tho' not pro testifying for Reprobatures when the witness deposed in fact an Allegance in them. The Lord Reduce their own Decrets in force upon New Matters of fact Enquired or Accused come to know in question the Decret; Altho' it was Competent to have been founded on in the Decret, if Evidence be given that it was not Bolose omitted to prove. the plea stain Lib. 4 Feb. 1544.

But the Lord of session cannot Reduce their own Decrets in force upon Allegations Competent and omitted to be proposed before sentence 18 March, 1630 *Horseburg contra Brown* that is knowingly omitted. The Reason why Decrets of session in force, whether upon new or many Actions in the first Instance, or Decrets of Suspension in the second, cannot be Coped or Reduced upon Allegance new Competent and

and Omitted is: because if such Reduction was sustained, the Rich and obligious might Casely Spin out or draw pleas to an Intolerable Length, and weary their poor innocent Adversary out of his just Right, by forbearing to plead all they had to say, and his pending in New grounds, and so pulling him to as Many new processes and Decrets, as they could imagine Defences and new Allegances inure are not Regarded, being Ignorant to Juris Nominum Excusats; and if parties do not Employ Skillfull Advocates, like *Hymont* it is their own fault for which they are ought not to suffer stain Lib. 4 Feb. 1550 Feb. 52 57. A Decret of session in force was found not quereable upon Allegations Competent and Omitted; albeit the Advocate for the Defendant in the first Instance offered to Produce; that he was not Employed for that party, but appeared only at the Request of another Advocate *7 Adam contra 1676 Bullantone contra Edgar*. Because the Advocate's Comparance without Warrant might make him liable to pay the parties Damages, yet it could not hinder the Decret in force being otherwise. It is not to be feared by such Decrets. Competent and omitted is Relevant only by Acquiescence of the Defendant or his friends whom he does not chuse to sue up any defence till a New process; but not by Acquiescence of the Plaintiff to Justice all *Mica* Conditions in our Libels, for they may super Divorce Medis in fact pursue the same thing or Cause as oft as they please; which red Frustrates with not Exclusivity about it with Bar new Defences Urging the points of fact or right founded on in the former sentence. Thus in *Beir* being in trust was spoiled for that the Declaration was granted on Death bed which could not take effect against the heirs. But thereafter the Pursuer having Recovered the greatest part of the Declarator of trust in a second process founded on the said Bond was sustained without regard to the Sentence of Competent and omitted in the first process 22 June 1681 *Paton contra Hislings* Tracts founded on in any Extracted Decret to infer Allegance not Expressly done by the party concerned are reputed as Acknowledged, and there is no place thereafter to object for any effect; that this want proof Act of Court 1 Feb. 1715. But Competent and omitted is not sustained in Decrets before the session 6 Feb. 1678 *Owners of the Calmer 8 Bullion contra Smeitoun 8* *hit Brown*. Or in Decrets before the Admiral 23 July 1667 *Jurgen contra Captain Logan* against Strangers, *quie* *Millintur*