

THE LORDS adhered to the judgment of the Lord Ordinary, which "over-ruled the objection to the decret." No 348.

Lord Ordinary, *Lord Rockville.* Act. *Macleod Bannatyne, Dalzell.* Alt. *Honyman.*
Clerk, *Menzies.*

C.

Fac. Col. No 109. p. 205.

SECT. XIX.

Reduction of Decrees.

1665. November 21. BAKERS in the CANONGATE.

THERE being a contract betwixt two bakers in the Canongate, to make use of an oven, still kept hot for both their uses, the one pursues the other, as desisting, and obtained decret before the Bailies of the Canongate for L. 36 of damage, which being suspended, it was *alleged ipso jure* null, as having compareance, mentioning defences, replies, &c., and yet expressing none; but refers the defender's action to the pursuer's probation by witnesses, who now offered to prove positively, that he continued in doing his part.

No 349.

THE LORDS would not sustain this visible nullity without reduction, though *in re minima inter pauperes*, for preserving of form.

Stair, v. 1. p. 310.

1696. July 30. GORDON against The DUKE of GORDON.

IN the pursuit by David Gordon, son to Mr Thomas, the criminal clerk, against the Duke of Gordon, it was debated, if the Duke ought to be reponed against a decret obtained against him when he was lately in France with King James; the nullity being, that he not only took forth the decret for the principal sums in the bonds, but also for the annualrents to which he had no title then in his person by confirmation or otherways. It was *argued* among the LORDS, That, conform to the article of the new regulations, it ought to be opened no farther than the nullity objected, and stand *pro reliquo*. But it was found that related only to decreets *in foro*, whereas this was in absence; so the LORDS reponed the Duke to his whole defences.

No 350.

Fol. Dic. v. 2. p. 206. Fountainhall, v. 2. p. 731.