No 84. and that sundry decreets had been found null for want of this probation, seeing *actore non probante*, the *reus* comes of course to be absolved; yet the Lords allowed the pursuers still a diligence to prove the time of their father's death, and of their expulsion; for so long as they staid *in familia* after his decease, they could crave no aliment, and declared they would summarily advise it, that it might appear *quo tempore* their aliment shall begin.

Fol. Dic. v. 2. p. 182. Fountainhall, v. 2. p. 522.

No 85. 1714. *January* 20. Lockhart of Carnwath *against* Creditors of Kersewell.

The Lords refused to sustain it as a reason to reduce a decreet of ranking, that after the date thereof, the interests of some creditors were taken in and ranked, without putting up a new decreet in the minute-book, in respect that by the taking in and ranking of these interests, there was no new scheme or class made in the said ranking, but they were only joined to the classes of the creditors formerly ranked.

Fol. Dic. v. 2. p. 182. Forbes.

*** This case is No 8. p. 8569. *voce* Member of Parliament.

No 86. 1753. *March* 7. Mrs Isobel Douglas of Kirkness, Supplicant.

Informations given into the Court of Session must be engrossed in the decree, if either party insist for it.

In the process betwixt Mrs Isobel Douglas and William Douglas concerning the estate of Kirkness, decided No 38. p. 4350. Mrs Isobel Douglas gave in a petition to the Lords, setting forth, That William Douglas had appealed the cause to the House of Peers; and, as the cause had been more fully, and somewhat differently stated in the informations than in the minutes of debate before the Lord Ordinary, craved that the Lords would ordain the informations to be ingrossed in the decreet.

William Douglas appeared, and *objected*, That the informations were no part of the process, and therefore could not enter the record; and though sometimes of consent they had been engrossed in decreets, or, after a hearing in presence, have been inserted in place of Inner-house minutes; yet, in this case, they could not be taken into the decreet, as there had been no hearing; and he would not consent to the extracts being swelled by informations; which would occasion an additional and unnecessary expense.

Observed on the Bench; That it was reasonable that whatever had been before the Court, should be engrossed in the decreet; and not only the parties, but also the Court, had an interest that it should be so, in order, that the House of Peers might know on what the judgment of the Court of Session had proceeded.

"The Lords ordained the informations to be engrossed in the extracts of the decreet." No 86.

For the Petitioner, *And. Pringle & Bruce.* Alt. *A. Lockhart & R. Dundas.* Clerk, *Gibson.*
Fac. Col. No 73. p. 112.

1804. *July* 11. KEITH, Petitioner.

No 87.
A bill of advocation in an action of removing must be intimated to the party, as well as in the inferior court.

Alexander Keith, Esq. of Ravelston, brought a process of removing against John Grinton, before the Sheriff of Edinburgh, who (May 9. 1804) pronounced the following interlocutor: "Having considered this condescendence, answers thereto, and whole process, and also the process presently depending between the same parties, respecting implement of certain obligations contained in the tack in question; finds there is evidence, that the defender has not implemented his part of the premises in terms of the tack, and therefore he is not entitled to the benefit of the option to continue for eleven years after Martinmas next; in respect whereof, ordains him to remove as libelled; finds him liable in expenses of process, which modifies to 40s. Sterling, besides the expence of extract."

Two reclaiming petitions were refused without answers.

Of this judgment a bill of advocation was presented, and the usual interlocutor pronounced, (June 6. 1804:) "To see and answer within fourteen days; in the meantime, sists procedure; and to be intimated." The intimation was accordingly made to the Sheriff-clerk substitute, but not to the party himself, nor his procurator.

Afterwards, (29th June) the Lord Ordinary pronounced this interlocutor: "Having considered this bill, and advised with the Lords, passes the bill upon the caution offered."

On the 5th of July, the letters of advocation were signeted.

Mr Keith having given orders to have the decree of removing extracted, now, for the first time, learned that these proceedings had taken place in absence; and petitioned the Court to have the letters of advocation recalled, and the principal bill transmitted by the keeper of the signet to the clerk to the process; and then to remit to the Lord Ordinary to recall his interlocutor, passing the bill, that answers might be given in.

This was done accordingly, (11th July;) as the bill of advocation should have been intimated to the party or his procurator; more especially as by act of sederunt, 14th June 1799, the charger need not put in his answers to a bill of suspension till he has had an opportunity of seeing the bond of caution; and the act also declares, that "the same rule shall take place as to bills of advocation in removings where caution is required."

Lord Ordinary, *Balmuto.* For the Petitioner, *Hay.* Agent. *Ja. Ferguson,* W. S.
Clerk, *Colquhoun.*