

The Lords made an order accordingly; declaring, that no consent of parties should prorogate the reclaiming days. It was entered in the Sederunt Book.

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1755. *February 20.* SIR W. DUNBAR *against* M'LEOD of M'LEOD.

THE Act 1672, c. 6, requires, in all executions of summonses, that the names and designations of the whole pursuers and defenders be mentioned in the executions. This regulation was necessary, in order to connect the execution with the summons; but, where the execution is wrote on the back of the summons, the Lords have found that this regulation is not necessary.

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1776. *November 29.* M'LEAN of KINGAIRLOCH *against* CHARLES MUNESS'S TRUSTEES.

A CAUSE having been brought before Lord Covington, and his Lordship having proceeded in it, and pronounced several interlocutors; at last, he observed, that he was subject to a declinature on account of relationship, in terms of the Act 1681. The Lords, on a petition, recalled the procedure before Lord Covington, and remitted the cause to the Ordinary on the Bills, (29th November 1776.)

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1776. *November 28.* LIVINGSTON of PARKHALL *against* YORK BUILDING COMPANY.

IN the case, Livingston Mitchell of Parkhall against the York Building Company, concerning the property of the coal of Craigend, a final interlocutor had been pronounced by the Lords, in presence, in July last; against which no reclaiming petition having been presented, the day elapsed. In the vacance, however, upon a search of his papers, the petitioner found certain papers, of which he was totally ignorant before, and which he judged material in the cause. He therefore, 23d November 1776, presented a reclaiming petition, founding upon these *instrumenta noviter reperta*; which he alleged took the case from under the Act of Sederunt. At moving the petition in Court, the Lords put the question to the petitioner, if he was willing, in the first place, to pay all the expenses which the York Building Company had already been put to in the cause? He declined paying the past expense, but said he was willing, if the petition was ordered to be answered, to pay the expense of the answers. The Lords, upon a minute to this effect being prefixed, refused the petition.

It seemed to be their opinion that *instrumenta noviter reperta* would take a case from under the Act of Sederunt as to the reclaiming days; but, in this case, as the papers were found in the party's own possession, they thought it