

ordinary and Ordinary." This was noticed by the Lords as an alteration and inversion of the style observed ever since the institution of the College of Justice ; and so much the more that it happened in a writer ; and the reason why our law and custom has ranked the Extraordinaries (though commonly taken from the nobility,) after the Ordinaries, is, because the Ordinary Lords only make the body of the Court of Judicatory ; so that nine of them can proceed without any of the Extraordinary. But, though the Chancellor and all the four Extraordinary were present, with eight Ordinary Lords, they can do nothing, though thirteen in number ; because they go not to the making up of the quorum. Nor are they essential to the Court ; but *accidens a subjecto separabile*, and at first designed to breed up some of the Peers in the knowledge of our municipal laws ; and so, being only an accessory in this case, the rank due to them by their birth or patents, of creation, is not here considered.

Mr William, finding his mistake, and borrowing up his bill and cancelling it, gave in a new one, reformed conform to the perpetual style used in these cases.

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1699. *February 28.* DR ROBERT TROTTER *against* JAMES BAR.

MR Robert Trotter, doctor of medicine, obtains decret against James Bar, herald-pursuivant, for payment of the debt due to the said Doctor by Cockburn of Ladykirk ; because the said James had taken him with caption, and delivered him to another messenger, who suffered him to escape ; and there was presumption of his taking money, and connivance : But, the Doctor insisting for his expenses, the Lords thought the action penal, and refused to decern the messenger in any.

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1699. *February 28.* ADAM DRUMMOND of MEGINSH *against* The CLERK of the BILLS.

ADAM Drummond of Meginsh gave in a bill, complaining, That, though he was assigned by Sir T. S. of B. to a bond of 2000 merks, granted to him by Sir J. M. of D. and was seeking a horning on the registrate bond, yet the Clerk of the Bills had refused it, in regard Sir J. M. the debtor, had obtained a decret of reduction of the said bond ; which he produced by way of instrument.

The case was :—Sir T. S. being in straits, prevailed with the said Sir J. to give him a bond to support his credit ; and, to secure him, he gave him a bond for the equivalent sum, to afford a ground of compensation ; and, being put at by Gairntully, he assigns this bond to him, who transfers it to Meginsh ; but, before intimation, Sir J. finding himself over-reached, obtains a reduction of the bond.

The Lords thought the Clerk of the Bills was not judge whether horning