

1738. *November 28. Supplication.*—ARCHIBALD MACLACHLAN, Merchant in Edinburgh.

A WITNESS having been guilty of prevarication, was sentenced by the Court on *22d Nov. 1738*, to be imprisoned till *the 29th*, and then to stand at a post at the cross for an hour. A petition was given in for him, praying for remission, or commutation of the punishment. Lord Kilkerran gives the following account of the procedure, subsequent to the interlocutor reclaimed against.

“*November 28, 1738.*—After pronouncing the interlocutor here reclaimed against, which was upon the *22d* instant, Mr. Erskine, Lord Advocate, suggested to the Court upon Saturday the *25th*, that there might be some doubt whether, this being a personal punishment, it was agreeable to law to order the execution of it before elapsing of eight days from the sentence? For which the Court, by the President, returned thanks to the Lord Advocate, and after reasoning a little of it among themselves, with shut doors, deferred the further consideration of it to this day. And, in the interim, the petition came in, which the Lords refused.

“But having taken into their consideration the act of Parliament above mentioned, discharging execution of sentences inflicting corporal punishment sooner than eight days after sentence, discharged the Magistrates of Edinburgh to put the said sentence into execution, and so the petitioner had the good luck to escape.

“The point disputed upon the bench was, whether we could prorogue the execution of the sentence to a farther time? And it would, I think, in general, be allowable for any court, which had fallen into such a mistake as to order the execution too early, to prorogue. Such was by Royston observed to have been done in England; and by the President, it was taken notice of, that the style of remissions implies such power to be in a court. For by the style of remissions, the court is ordered to defer execution, &c.

“But the specialty of the present case lay here, that in this case the imprisonment was not merely a detention, in order to the execution of the sentence, as *ex. gr.* where one is sentenced to be hanged, the keeping the criminal in prison is no part of the punishment. But in this case the imprisonment was actually part of the punishment. And it was thought we could not extend or enlarge the punishment by a longer detention in prison, and, therefore, discharged execution, as above.”

This case is reported by Elchies, (*Execution*, No. 3. and *notes*, *ibid.*)

1738. *December 12. BANK OF SCOTLAND against RAMSAY.*

IN a competition between the Bank of Scotland and Ramsay, which was reported to the Court by the Lord Ordinary, Lord KILKERRAN states, that “when the Ordinary began the report, *Royston* offered to decline himself, as being an extraordinary director. Some of the Lords took notice, that in a former case, the Lords had found, that being an ordinary director was a ground of declinator, but