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

A WITNESS having been guilty of prevarication, was sentenced by the Court on 22*d Nov.* 1738, to be imprisoned till *the* 29*th*, 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

that being an extraordinary director was no ground of declinator. It was said by Kilkerran, that as he was a proprietor, and as he was of opinion, that if any declinator lay, it was founded on being proprietor, he also desired the judgment of the Court how far he could vote. ARNISTON gave his opinion, that the objection lay upon being proprietor; and that if the declinator against the proprietor was repelled, so should that of being director, *et vice versa;* but that he was of opinion, that the declinator to a proprietor was good, unless there lay such objection to so many of the Court that a quorum would not remain, in which case, the Court behoved *ex necessitate* to judge. *Ita* also *Elchies:* but, upon a vote whether either *Royston* or *Kilkerran* could vote, it carried by great plurality to repel the declinator.

Vide Elchies; *Voce Jurisdiction,* No. 50.

1738. *December* 1. GRANGER *against* HAMILTON.

HAMILTON set a tack to Granger, of the lands of Kype, for nineteen years, by which the tenant's entry to the arable lands was declared to be at Martinmas 1728, and to the houses and grass, at Belton 1729, with this provision, *inter alia,* " that it shall be lawful to, and in the power and liberty of the said John Hamilton, by himself, his servants or family, and no otherwise, to enter to the possession of the said haill lands, &c. at any legal terms after the expiration of the first ten years, and that the said tack shall from thenceforth expire, and become void and null; and the said J. H. his entry to the possession of the said houses, &c. is hereby declared to be as follows, viz. to the arable lands at Martinmas, and the houses, &c. at Belton next thereafter, he being obliged to make lawful premonition, in either of the cases foresaid, to the said James Granger, of his entry to the said lands, in presence of a notary and witnesses, forty days before the term of Whitsunday preceding his entry thereto."

The landlord executed a warning against the tenant on 2d Nov. 1737, and also intimated to him, before a notary and witnesses, to remove from the arable lands at Martinmas 1738, and from the houses and grass at Belton 1739. A decree of removing having afterwards been obtained by the landlord, it was *objected* to the warning, in a suspension:

That the warning was irregular, in so far as the Act 1555 implies that the warning should be made within the year.

ANSWERED, 1*mo,* The act makes no limitation: it says that warning is to be made *at any time within the year, forty days before the feast of Whitsunday,* which is the same as if it had said at any time of the year, provided it is not nearer Whitsunday than 40 days. There is no limitation to make the warning in the same year with the removal, rather than the year before; and it is an advantage to the tenant to get earlier notice. 2*do,* If the law had intended to limit the time to a year, that year behoved to be computed *retro,* not from the conventional term of removing, but from the term of Whitsunday preceding it; for it is settled by decisions, that whatever be the conventional term of removing, the