

1774. *February 22.* DOUGLAS, HERON, and COMPANY *against* MR BARON GRANT.

## DECLINATOR.

IN this case Lord Hailes proponed a declinator against himself, as being the brother-in-law of Sir Adam Fergusson, one of the partners of the Douglas and Heron's Bank. He observed that, if Sir Adam had been one of two or three partners in a private merchant company, the declinature would have been certainly good. Thus the Lord Justice-Clerk was always allowed to decline himself where J. Murdoch and Company were parties, because John Murdoch, a partner, was his father-in-law. And, where Mansfield and Company were parties, because P. Miller, his brother, was a partner, it was observed by some of the judges, that partners in the Royal Bank were allowed to vote, and that the interest of any partner in so numerous a company as that of Douglas and Heron was small. It was answered that the Royal Bank was a corporation, and that the partners in it were not parties in any action, for that such action always went in the name of the governor and directors; that the smallness of the interest of each individual in the Douglas Bank, supposing it small, can make no difference, if the interest is direct, for a declinature will not be repelled when the concern of the judges relation is *small*, and sustained when *great*. *Majus et minus non variant speciem*. At length the Court examined into the state of its members present, and found that a similar declinature lay against so many of the judges, that, if it was sustained, there would not be a *quorum* left; and therefore they, from the necessity of the thing, repelled the declinature. They must determine the causes which come before them; and it was considered that declinatures must be repelled, when, by their being sustained, there would remain no quorum for determination.

---

1774. *February 23.* CAPTAIN THOMAS DUNBAR *against* CAPTAIN DUNCAN URQUHART.

## MEMBER OF PARLIAMENT.

On a freeholder's disposing his lands with procuratory and precept, it is sufficient to preserve his right, that, in the procuratory, and likewise in a separate obligation, the disponent is taken bound not to execute the procuratory.

[*Fac. Coll., VI. 289; Dictionary, 8826.*]

MONBODDO. Though a man has sold his estate, he is still entitled to stand on the roll, if not denuded. The only remedy is the trust oath: That is, between God and his own conscience.