BLACKWOOD *against* CATHCART.

JOHN Cathcart, merchant in London, having obtained the Chancellor's certificate under a commission of bankruptcy, pleaded it in bar of an action brought against him by Alexander Blackwood.

Objected, That Mr Cathcart was not entitled to the benefit of the certificate, not having surrendered his whole effects, but concealed, 1*mo*, A house in Edinburgh; 2*do*, A small landed estate in Scotland; 3*tio*, Half pay which Mr Cathcart enjoyed on account of a military employment which he had formerly held in the West Indies.

The Lords found so; and therefore found him liable for the debt. But this judgment was reversed by the House of Lords. As to the first, it appeared that Mr Cathcart had gifted the house to his sister, thirty years before the bankruptcy. The landed estate had been adjudged by a creditor for more than its value, who did not accede to the commission; and the third, as half pay, was reckoned not assignable.

The ASSIGNEES under a Commission of Bankruptcy *against* GEORGE BUCHANNAN.

ANNO 1759, George Buchannan obtained the Chancellor's certificate under a commission of bankruptcy: he had subjects in Scotland, heritable: the assignees brought an action against him, to enter heir in these subjects, and to convey them to the assignees. Objected, The action was incompetent, and unprecedented. But the assignees prevailed.

N.B.—This decision is not approved of.

FORGERY.

1776. *June* 15. JAMES SPENCE *against* LAURENCE SPENS.

IN the process, James Spence, treasurer to the Bank of Scotland, against Laurence Spens, Writer to the Signet, for payment of a bond for L. 100, in which Laurence Spens, his father, had become bound as cautioner for one Campbell, (9th June 1760;) Laurence Spens proponed compensation on a holograph promissory-note by James Spence to his father, dated 2d May 1766, for L. 60. James Spence denied that this note was of his handwriting, or subscribed by him. Both parties were examined; and, after a variety of proce-

dure, the Lords, on report of Lord Gardenston, 15th June 1776, found the note not probative. Laurence Spens reclaimed, and, in his petition, insisted a good deal on a proof of the authenticity of the note *ex comparatione;* and offered to adduce some engravers, and writing-masters, skilled in comparison of writings, to prove the same. He cited particularly Erskine, *B.* 3, *tit.* 2, § 22; and from his authority, as well as the reason of the thing, insisted upon the validity of a proof *ex comparatione*, especially where it was not of the bare subscription only, but of the body of the deed.

FORM OF PROCESS.

1776. *March* 6. M'CASH *against* AIRD.

IN a cause depending before Lord Justice-Clerk, his Lordship, 23d February 1776, pronounced decreet, assoilyieing the defender. The pursuer drew a representation; but, before presenting it, the Ordinary went to England. Afterwards, the pursuer brought his representation to the clerk of the process; who, telling him that the Ordinary was gone, refused to receive it, as there was no possibility to have a signature note upon it; but the agent threw it down upon the table and left it, (6th March 1776.) The affair lay over till the Session rose, and then the defender extracted his decreet, and took no notice of the representation.

Next Session the pursuer gave in a petition and complaint, praying service on the party, his agent, and extractor, and to have the decreet recalled, as premature and irregular.

In this petition, it was said, that there were three ways in which a representation may be presented, *viz.* either to the Ordinary, or to the Ordinary's clerk, or to the clerk of the process. These it was said are equally regular, and perhaps the last the most regular of the three.

In June 1771, in the case *Drummond of Lundin* against *Coventry*, a representation had been lodged with the clerk; but he had neglected to mark the date of presenting. Two questions therefore occurred,—*First*, Whether it was regular, at all, to lodge a representation with the clerk of the process, or if it ought to have been lodged with the Ordinary or his clerk. *Secondly*, If parole evidence could be received to prove that a representation was given in within the days, when no marking was upon it.

No decision however was given upon either of these points, because, the process being a process of count and reckoning, it was thought that accounts might be given in at any time, without regard to the reclaiming days.

As to parole evidence, the point occurred *anno* 1770, in a case, *Earl of Findlater* against *Gordon of Park*.