

ture, 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.

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## FORM OF PROCESS.

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1776. March 6.

M'CASH against AIRD.

IN a cause depending before Lord Justice-Clerk, his Lordship, 23d February 1776, pronounced decret, assoilyeing 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 decret, 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 decret 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*.

As to the present case, the Lords were of opinion, that, in the absence of the Ordinary, the application ought to have been made to the Lords in presence, and that the representation was incompetent; so that it was needless to enter into the other points of form; however, they remitted the petition to the Ordinary,—it being understood, all circumstances considered, that, if his interlocutor, 23d February, needed review, he would review it.

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FLOCKHART *against* STEEL.

IN a process of scandal brought by Mr Flockhart before the Commissaries of Edinburgh, against Mr Steel, the Commissaries found:—"That the expression of                    was injurious to the pursuer; and therefore fined and amerced the defender in the sum of L. 10 sterling, payable to the treasurer of the Royal Infirmary; but, in the event of the defender appearing in Court, and judicially signing the palinode hereunto annexed, restricted the fine to 10s. sterling," &c.

The palinode was in these words:—"Whereas I, George Steel, have been convicted, by sentence of the Commissaries of Edinburgh, of injuring the character of John Flockhart, by calling him                    in manner mentioned in their interlocutor, dated                   ; therefore I hereby do, in obedience to said interlocutor, acknowledge that what I so said was injurious to Mr Flockhart's character; and I beg pardon of God,—of the said John Flockhart, and of all good men, for my said injury."

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1776. *June 21.* PROCURATOR-FISCAL of the LYON COURT *against* MURRAY of POLMAISE.

This day, *viz.* 14th June 1776, I was desired to move a reclaiming petition of the Procurator-fiscal of the Lyon Court, reclaiming against an interlocutor of Lord Hailes, in a dispute betwixt said Procurator-fiscal and Murray of Polmaise, (14th June 1776.)

The reclaiming days were long ago elapsed; but the agent for Mr Murray having given a signed consent to prorogate them to this day, it was alleged, that this was sufficient.

The Lords thought the practice irregular; for, although it is true that the consent of parties may dispense with certain forms, as wakenings, &c. yet the reclaiming days are fixed, as well for the benefit of the Court as of the party; and ought not to be dispensed with.

And this day, 21st June 1776, when the petition was moved, in presence, by the Lord President, his Lordship declared, that though the objection was to be past over for this time, yet it would not be so in time coming.