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.

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 amerciated 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."

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.

The Lords made an order accordingly; declaring, that no consent of parties should prorogate the reclaiming days. It was entered in the Sederunt Book.

1755. *February* 20. SIR W. DUNBAR *against* M'LEOD of M'LEOD.

THE Act 1672, c. 6, requires, in all executions of summonses, that the names and designations of the whole pursuers and defenders be mentioned in the executions. This regulation was necessary, in order to connect the execution with the summons; but, where the execution is wrote on the back of the summons, the Lords have found that this regulation is not necessary.

1776. *November* 29. M'LEAN of KINGAIRLOCH *against* CHARLES MUNESS'S TRUSTEES.

A CAUSE having been brought before Lord Covington, and his Lordship having proceeded in it, and pronounced several interlocutors; at last, he observed, that he was subject to a declinature on account of relationship, in terms of the Act 1681. The Lords, on a petition, recalled the procedure before Lord Covington, and remitted the cause to the Ordinary on the Bills, (29th November 1776.)

1776. *November* 28. LIVINGSTON of PARKHALL *against* YORK BUILDING COMPANY.

IN the case, Livingston Mitchell of Parkhall against the York Building Company, concerning the property of the coal of Craigend, a final interlocutor had been pronounced by the Lords, in presence, in July last; against which no reclaiming petition having been presented, the day elapsed In the vacance, however, upon a search of his papers, the petitioner found certain papers, of which he was totally ignorant before, and which he judged material in the cause. He therefore, 23d November 1776, presented a reclaiming petition, founding upon these *instrumenta noviter reperta;* which he alleged took the case from under the Act of Sederunt. At moving the petition in Court, the Lords put the question to the petitioner, if he was willing, in the first place, to pay all the expenses which the York Building Company had already been put to in the cause? He declined paying the past expense, but said he was willing, if the petition was ordered to be answered, to pay the expense of the answers. The Lords, upon a minute to this effect being prefixed, refused the petition.

It seemed to be their opinion that *instrumenta noviter reperta* would take a case from under the Act of Sederunt as to the reclaiming days; but, in this case, as the papers were found in the party's own possession, they thought it