1778. *March* 11. BRUCE of KINNAIRD *against* CARRON COMPANY.

IN the much contested process betwixt the Carron Company and Mr Bruce of Kinnaird, concerning their lease of the coal of Kinnaird; the Lords having in February last pronounced an interlocutor, Mr Bruce reclaimed against it, and his petition was ordered to be answered by the Company; and the day for giving in their answers was prorogated to the 23d April. Mr Bruce, finding it impossible to get a decision this Session, resolved if possible to carry his cause by appeal to the House of Lords; where he hoped to get a determination before the Session of Parliament came to an end. But then, he saw that, unless his reclaiming petition was taken out of the way, this would be ineffectual; as, in all such cases, the House of Peers consider the cause as still depending below, and refuse to proceed upon it, until the merits of the reclaimer is determined. He, therefore, in the last hour of the Session, presented a short petition, (11th March 1778,) craving liberty to withdraw his reclaiming petition, and avowed his intention of carrying the cause elsewhere. The petition containing some reflections on the Carron Company's dilatory conduct of the cause, their lawyers insisted for liberty to answer it: and they said, in general, that no paper given into Court, by any of the parties in a cause, can be withdrawn without consent of the other; especially if it contains admissions either in fact or law. But whether it did so or not, they held the doctrine to be general, and therefore insisted to see the petition. The Lords were inclined to follow their ordinary course in all similar cases, never to hinder a party to answer a petition, if they insisted for it. Mr Bruce, seeing this, withdrew his written petition.

JUDICIAL ENACTMENT.

A JUDICIAL enactment of a defender to appear personally at all diets of Court, may be done by a short minute, drawn and written by the clerk, and signed by the party, without any other solemnity.

1764. *July.* JOHN MACKENZIE of BRAE, &c. *against* COLONEL SCOTT and OTHERS.

IN the election causes of the Burgh of Dingwall, the election having been brought under challenge; the Lords found, "That the election of Magistrates and Councillors for the Burgh of Dingwall, made at Martinmas 1758, by the persons complained upon, was brought about by the means of bribery and corruption; and therefore found the said election void and null, and reduced the same, with all that might follow thereon; but refused to declare the persons voted for by the complainers to be legally elected, and found Colonel John Scot, &c. conjunctly and severally liable in full costs of suit, with the expenses of extracting the decreet:" And, by an after interlocutor, the Court modified the expenses to about L.440. These expenses being insisted for, Colonel Scot, &c. insisted, that, besides a valid discharge, they were entitled, upon payment, to

have an extract of the decreet delivered up to them. And having presented a bill of suspension, the Lords found it sufficient that they got an excerpt or abstract of the decreet, so far as related to the expenses; but that the chargers were not bound to deliver up the full decreet, which they were entitled to retain as their own document, to be used in case of appeal, or otherways, as they should think proper. The Lords were of the same opinion in a similar dispute between *The Earl Morton* and the *Feuars of Orkney*, and betwixt the *Lord Fortrose* and *Mr John Mackenzie*.

1765. *August* . M'VICAR *against* MACALLUM and KER.

AN error in a first extract of a decreet may be corrected in a second, though thereby the second be disconform to the record, provided that it is conform to the warrants. See Fount. Vol. I. p. 686, *Brown* against *Burnside*. The Lords were of the same opinion in an extract from the Laigh Parliament House, *Neil M'Vicar* against *Macallum and James Ker, Keeper of the Records, August* 1765.

When an Ordinary takes a cause to report, and makes avizandum to the Lords, and orders informations, and, these being drawn, grants a warrant to enrol and to give them in; it is still competent for him, on the application of the parties, or either of them, to allow an additional paper either on one side or both, as he thinks proper. And as, by making avizandum to the Lords, the Ordinary is *functus*, therefore, after the Lords have given their interlocutor, the cause does not return to the Ordinary, unless there is a special remit for that purpose. But it is otherways in a petition and answers: a petition, reclaiming against the interlocutor of an Ordinary, does not exauctorate the Ordinary after the decision is given by the Court. The cause returns to the Ordinary without any remit, and may be further proceeded in; and when this has been contested, it has been so found by the Lords. A distinction was attempted in the cause, *M'Lean* against *M'Lean*, between causes proper for the Inner-House, such as reductions, even where there was a warrant to discuss. And it was alleged, that, in these, if the reasons of reduction were determined by interlocutor of the Court, expenses could not be got from the Ordinary, unless there was a special remit of the cause back again to him; and the reason given was, that the first remit to discuss the reasons, was at an end, and the cause, being an Inner-House cause, remained there, unless there was a new remit. But this reasoning was too subtle: an Inner-House cause remitted to the Outer-House becomes an Outer-House cause to every effect: And so the Lords thought, M'Lean against M'Lean.

FRAUDULENT BANKRUPT. See BANKRUPT.