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

reasonable that, *ante omnia*, he should reimburse the other party of their expense.

1776. *December* 11. JOHN GRANT *against* MARSHALL and STEWART.

JEAN M'EWAN obtained decreet, finding the letters orderly proceeded against John Grant, junior, writer, upon the 17th of July 1776; to which the Ordinary, Lord Monboddo, adhered, on advising a representation and answers, 2d August 1776. The 2d of August 1776 was a Friday; on that day it was put up in the Minute Book, in terms of the Act of Sederunt, 6th February 1748; and it was extracted on the Wednesday thereafter, being the 7th of August 1776: Grant gave in a complaint, that it was extracted irregularly and precipitately; but the Lords (11th December 1776,) dismissed the complaint, and found Grant liable in expenses. The three days mentioned in the Act of Sederunt are, by practice, understood to be lawful natural days; so that Saturday the 3d, Monday the 5th, and Tuesday the 6th of August counted; and the decreet was not extracted till the Wednesday.

It makes no difference whether there were answers to the representation or not, *29th July* 1777, *Swinton* against *Currie*.

1777. *July* 29. SWINTON *against* CURRIE.

In another case, Swinton against Currie, decided 29th July 1777, a decreet on a refused representation and answers, pronounced 1st July, being Tuesday, put in the Minute Book on Wednesday, and extracted on Saturday, was thought premature, the three days not being expired. It was recalled on the petitioner's paying expenses hitherto incurred.

1776. *December* 13. GILLESPIE *against* M'DOUGAL.

GILLESPIE complained that a suspension at his instance, after advising answers, replies, and duplies, had been past upon caution; but he having failed to find caution within 14 days, as fixed by Act of Sederunt,—the charger, without obtaining a certificate from the clerk to the bills, that no caution had been found, which was indisputable law as well as practice, had proceeded to diligence. The Lords were of opinion, that, though these certificates are often demanded *ob majorem cautelam*, yet they are not necessary. If the charger think proper to proceed to diligence, he may do so, *cum periculo*. Gillespie further complained, that, after he was apprehended, he applied by a new suspension, and obtained a sist; which was intimated. The Lords were of opinion, this was no stop to incarceration. They had found so formerly; and therefore, upon the whole, they rejected the complaint.

See *Suspension*.