

APPENDIX.

PART I.

APPEAL.

1802. *January 28.* HENDERSON and another, Petitioners.

SIR JOHN HENDERSON of Fordel, Bart. and Colonel James Francis Erskine of Forrest, were found liable in damages and expenses, in an action which had been raised against them. The decree in the process had been extracted, and they were charged with horning for payment.

A bill of suspension was presented against the charge upon the ground, that an appeal had been taken by the petitioners, though, owing to the unexpected adjournment of Parliament, an order could not be immediately obtained on their petition. This bill was refused by the Lord Ordinary; but he sisted execution for a few days.

In the meanwhile, a certificate (21st January 1802) was produced from the Clerk of the Journals of the House of Lords, that an appeal had been lodged at his office, at the instance of the petitioners, against the interlocutors of the Lords of Session; "which appeal will be presented to the House on Wednesday, the third day of February next." A note was given in to the Lord Ordinary, accompanied with this certificate, praying for a prorogation of the sist of execution until the 6th of February; but his Lordship declined to write upon the note, or to grant any such prorogation.

And a petition to the Court was refused as incompetent, it being the unanimous opinion of their Lordships, that the certificate of the Clerk was not sufficient, in respect that no order for service had been given.

Lord Ordinary, *Polkemmet*. For the Petitioners, *Erskine*. Agent, *Wm. Walker, W. S.*
Clerk, *Pringle*.

J.

Fac. Coll. No. 19. p. 40.

No. 1.

A certificate from the clerk of the Journals of the House of Peers, that an appeal is lodged, is not sufficient to stop the execution of diligence on a decree.