No 6. liament, sustained his plea, notwithstanding he had waved his privilege, by answering before the House of Lords, and could not reassume it, especially against the execution of a sentence passed upon compearance. This occasioned the petitioner to protest for remeid of law; but, upon better advice, he gave in a summary complaint to the House of Peers, as a more expeditious and less expensive way to obtain remedy, who thereupon directed a second order to the Lords of Session, That they should forthwith tax the said expenses, and direct the same to be paid to the petitioner, pursuant to the order and judgment above-mentioned. Therefore the petitioner prayed their Lordships to resume the consideration of the affair, and his account of expenses, and forthwith to proceed to determine therein, and order payment thereof.

Answered for Sir Alexander Cuming; He conceived himself not bound to answer to the petitioner's claim, unless he were cited, and had the *inducie legales*, as the Lords found last year upon the same question; nor can the former summons support the present petition, because the Lords have determined upon a point of privilege belonging to Sir Alexander, as a Member of the House of Commons; and Sir Andrew having protested for remeid of law, the Lords are *functi*, and he is out of the field, until that protestation be regularly discussed. For the order now insisted on, viz forthwith to tax, is to be understood in civil and habile terms, that is summarily, without abiding the course of the roll, but never without a citation and libel, which is essentially and previously necessary to the obtaining of any decerniture whatsoever upon the most summary complaints, even against persons present, unless there were an action depending, in which the complaint is receivable by way of incident, which cannot in this case be said, seeing the former dependence in the principal cause is determined by a decree.

The Lords found, That Sir Alexander Cumming must answer to the petitioner's claim of expenses, without necessity of any further citation.

Forbes, p. 604.

1713. *November* 28. Colonel John Middleton and his Lady, Supplicants.

No 7. The Lords allowed a creditor to raise, use, execute, and register inhibition, without arrestment, and also to execute adjudication, against a cautioner, though a Peer of Parliament;

Upon a bill given in by Colonel Middleton and his Lady, representing that the Viscount of Kilsyth stood bound to them as cautioner in the requisition of an heritable bond for 12,000 merks, granted by the Lairds of Neistoun, older and younger, and that the seven years, within which, by the act 5th Parl. 1695, diligence is to be done against the cautioner, were here expired; and craving, that notwithstanding the Viscount's privilege, as one of the sixteen Scots Peers of Parliament, the Lords would either allow suitable diligence, at the petitioner's instance, to pass against the Viscount, in the terms of the statute aforesaid, or else declare that the seven years mentioned therein is to be computed *tempus utile*, subducing therefrom the time of the privilege.

THE LORDS having considered the act of Parliament 1695, anent principal and cautioners, whereby it is provided that cautioners should be bound for no longer than seven years, and that what legal diligence by inhibition, horning, arrestment, or any other way, should be done within the seven years, by creditors against their cautioners, for what fell due in that time, should stand good, and have its course and effect after expiration of the seven years, as if the said act had not been made; they found that the petitioners might raise, use, execute, and registrate inhibition, without arrestment, and raise, use, and execute adjudication, and call the same, reserving to the Viscount of Kilsyth, at calling thereof, to propone against pronouncing act or decreet thereupon; and likewise raise horning without poinding or arrestment, and charge thereupon, *ad hunc effectum* only, to entitle the petitioners to the benefit of the diligence mentioned in the said act.

No 7.
also to raise horning, without poinding or arrestment; to the effect of preserving the recourse against the cautioner, in terms of act 5th Parl. 1695.

Fol. Dic. v. 1. *p.* 573. *Forbes, MS. p.* 7.

1714. *January* 20.

GEORGE LOCKHART of Carnwath *against* The CREDITORS of KERSEWELL.

No 8.
A Member of Parliament compearing by his lawyers in a ranking, who produced his interest, which got a place in the ranking, was found excluded by the defence of *res judicata*, from reducing the decree of ranking.

GEORGE LOCKHART of Carnwath, a real creditor upon the estate of Kersewell, raised reduction of a decreet of ranking of the creditors, upon several grounds. His first reason of reduction was, that there were interests of some creditors produced and ranked in the decreet after the 7th February 1711, the date thereof, and yet no decreet was put in the minute book, which ought to have been done, seeing the interlocutors preferring the admitted parties are all now sentences; yea in the case of Glendinning of Partoun against Irvine of Drumcoltran, the Lords opened a decreet *in toto*, because extracted before it was read in the minute book. Now it is yet more absurd to extract an old decreet after new preferences, which were plainly a passing from it. *See* PROCESS.

Answered for the defenders; Where, after a decreet of ranking pronounced, giving direction and rules for classing the creditors according to their several rights and preferences, another creditor appearing is preferred in a new class or order by himself, a new decreet of ranking and preference used to be put up in the minute book; but, where the interests of other creditors can be brought within the compass or order decerned, and are ordained to be ranked with other creditors in particular classes already ranked, no new decreet ought to be put up, but the decreet goes out of the date of the great rule, giving the admitted creditors preference in such classes and order.

THE LORDS repelled this reason of reduction, that, posterior to the date of the decreet of ranking, the interests of some creditors were taken in and ranked, without putting up a new decreet in the minute book, in respect that, by the