

wise, that apothecaries might apply the same; and that oaths were not allowed to any party any where; and that it was a great inconvenience to the lieges, and to both employments, that one person should exercise both:—

The Lords found, That the chirurgeons of Edinburgh had the only power of phlebotomy, except in the case of necessity or charity, in so far as concerned the citizens of Edinburgh: But whether the same was to be extended to the suburbs or to the inhabitants not being citizens, they ordained the parties to be further heard; and found the apothecaries might apply sear-cloths where there was no incision, and the chirurgeons only where incision was to be made. And, as for the manner of probation, and conjunction of the employments, they ordained the parties to be further heard; but that forbearance should be *medio tempore*, as to the particular manner of probation.

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1681. *July 19.* JOHN BURTON *against* MR ALEXANDER BURTON.

JOHN BURTON, having raised a brief of idiotry or furiosity against Mr Alexander BURTON, his brother; and, accordingly, an inquest being called by the Bailies of Edinburgh: Mr Alexander, having given in a bill of advocation upon this reason, That this unjust design of his brother was to enhance his estate, and restrain his person; and being of the greatest moment to him as to his fortune, liberty, and fame, it ought to be advocated from the Bailies, who have called a number of obscure persons upon the inquest; that the Lords may remit the brieves to the macers, and appoint assessors, as is ordinary in brieves of difficulty and importance:—

The Lords advocated the brieves *in statu quo*, and gave commission to the macers to serve upon the same day which was appointed by the Bailies, and to make use of the persons of the inquest, if they found them qualified; and named three of their number to be assessors.

The macers having kept the diet, it was ALLEGED for Mr Alexander BURTON, That the service of the brief could not proceed; because, before the raising thereof, he had raised a declarator before the Lords that he was *compos mentis*, and so was neither idiot nor furious; which is prejudicial, and ought to be first discussed, and is, in effect, a precognition necessary for preserving the reputation of the lieges against the groundless pretensions by such brieves: which pass of course, and whereby any man, how judicious soever, may be brought before an inquest as an idiot, or furious person, and be thereby abused and disgraced: So that, if the Lords, upon the declarator, find Mr Alexander to be *compos mentis*, they ought simply to discharge the service of the brief.

It was ANSWERED, That, in this case, there is sufficient ground to raise the brief; Mr Alexander having been, by the Privy Council, appointed to be restrained and kept by his brother, upon extravagant letters of his, read in council; and, therefore, the law of the kingdom having prefixed a peculiar form for trial of the discretion of the idiotry or furiosity of any person to be by brief and inquest, it cannot be otherwise determined by a declarator more than a

service of heirs ; and, therefore, the Lords have done all that can be done, by appointing assessors of their own number in all their procedure, and without whom the macers cannot proceed.

The Lords repelled the defence : but allowed Mr Alexander, upon the declarator, to cite witnesses before the inquest ; to instruct that the extravagant acts alleged upon were done when he was drunk, and that when he was out of drink he was *sedati animi*.

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