

tutors and curators nominate to find caution, or removing them as suspect. Accordingly, upon a complaint of this nature, given in by Mary and Janet Witherspoons, their husbands and children, interested in the settlement of their brother, James Witherspoon, who had named tutors and curators to their said children, the Lords, December 4th 1774, removed the said tutors and curators as suspect, and discharged them from further administration of the pupils' affairs.

A *pactum de quota litis* reduced on a summary application, *Mackenzie* against *George Forbes, writer*.—See Books of Sederunt, July 23d 1774.

1776. December 4. EARL OF LAUDERDALE, Petitioner.

JOHN Cross, one of the keepers of the laigh Parliament-house, was also doer for the late Earl of Lauderdale; and some of the Earl's papers having been found in that house, belonging to no register, but most of them principals, apparently deposited there by Mr Cross for preservation from fire, the present Earl applied to the keepers to have them up, on an inventory and receipt. They demurred. Whereupon he presented a summary petition to the Court for a warrant of delivery. The Lords thought this a dangerous precedent, to take papers even out of a register house in this summary manner; they did not know what might be under it, or what claims Mr Cross's representatives might have upon them by way of hypothec; and though, on presenting the petition, they ordained the same to be intimated to Mr Cross's representatives, yet, on recollection, December 4th 1776, they found the application irregular, reserving to the Earl to bring an exhibition for recovering them against all concerned.

1776. December 18. GILKIE against FARQUHARSON.

GILKIE gave in a complaint, setting forth that Farquharson, writer, having obtained a suspension and liberation against him, at the instance of his client, MacDonald, the same had been executed against him by a messenger, at Farquharson's instigation, while the suspension lay in the signet, being hypothecated for payment of the signet dues. But he craved only service against Farquharson, and not against the messenger. The Lords thought he had mistaken his party, and that he ought to have craved service against the messenger: "In respect therefore, that he had not done so, they refused to grant warrant for service."

Had he done so, they would have granted warrant for serving it against both.

1777. February 27. PETER HAY of LEYES against WILLIAM TAYLOR.

WILLIAM Taylor, writer in Edinburgh, had been doer for Peter Hay of Leyes;

as such he fell debtor to him in a balance of money, and came to be possess of his most valuable writs. He was pursued by Mr Hay's son, his father having died, for payment of the one and restitution of the other; and decreet having been obtained, and diligence done, he was incarcerated in the prison of Innerkeithing. Taylor delivered part of these writs to Mr Hardie, his doer, to be restored to Mr Hay; but still, there being delays, Mr Hay gave in a summary complaint, praying that Mr Hardie might be ordered to deliver up such of his writs as he was possessed of upon inventory and receipt; that Taylor might depone whether he had any other, and, if he had, might be ordered to deliver them up; and, in short, that the Lords would grant him such relief, in the premises, as they should think proper.

Hardie appeared, and offered to deliver up all the writings in his hands; which the Lords ordered. But, as to Taylor, they ordered the complaint to be served: they ordered him to answer within 48 hours after service: and, in order that he might be at hand to be examined, they granted warrant for transmitting him from the prison of Innerkeithing to the prison of Edinburgh, there to remain till further order of Court.

In a case such as this, where the ordinary compulsitors of the law seemed ineffectual, and where a person, an agent in the Court, obstinately persisted in keeping possession of his client's papers, notwithstanding of a decreet *in foro*, decerning him to deliver them up, the Lords seemed determined to apply some extraordinary remedy to enforce obedience to their authority, and to redress the party.

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1777. August 9. DUNCAN BUCHANAN *against* CAPTAIN M'DONALD.

DUNCAN Buchanan, land-labourer, was taken up at Glasgow, by a party of the 71st regiment, as a deserter; they alleged that he had been enlisted at Perth, under the name of John Campbell, and had afterwards changed his name, and deserted. This Buchanan absolutely denied, insisting that, during the time condescended on when he should have enlisted, he had resided constantly at Stirling, attending a school there, and that he had never changed his name. Finding himself, however, unsupported, and hardily used in prison, he appeared before a magistrate, acknowledged the fact alleged, and engaged to attend the regiment.

Afterwards, however, having received encouragement to stand to his innocence, he preferred a complaint to the provost of Glasgow, insisting on the truth of his story, first above mentioned, and prayed to be liberated; and, in the course of this complaint, proofs were led of the identity of his person, amazingly contradictory. The provost being ready to pronounce judgment, Captain M'Donald, the officer against whom the complaint had been served, presented an advocacy, which was passed and signeted, and the discussion put over till next winter; whereupon Buchanan presented a bill of suspension and liberation, which was intimated to M'Donald, and, at the same time, presented a summary complaint to the Court for damages.

The Lords refused it as incompetent.—9th August 1777.