

1680. *July 2.* ALEXANDER GIBSON *against* LORD DUNKELD.

MR Alexander Gibson pursues a declarator against the Lord Dunkeld, as having lost and amitted his right of tutory of Mr Alexander's brother of the last marriage, because he had not made an inventory of the pupil's estate, conform to the 2d Act of Parliament 1672.

The Lords declared he had lost the office, and removed him as suspect; and would not allow him to purge the bygone *mora*, albeit he offered to make an inventory immediately, and the reason of the delay was, because one of the tutors nominated *sine quo non* was dead. *Quær.* if the tutory was expired thereby. The Act of Parliament seems not expressly to impose deprivation in this case, but only that such a tutor or curator shall lose his expenses; yet deprivation is deducible from the Act.

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1680. *July 2.* SMITH or BAIRD *against* AULDCORN and CARNEGIE.

IN a case betwixt Smith, wife to Mr Thomas Baird, advocate, against Auldcorn and Carnegie, the Lords found a behaviour as heir purged by this defence, That he had a probable cause of ignorance and mistake by his mother's contract of marriage, the lands being provided to the heirs or bairns of the marriage, upon which he apprehended he had a title as creditor; therefore the Lords allowed him yet to renounce, though he had immixed upon the mistake foresaid, he making all forthcoming; and if he did not purge and restore, then found him liable for the debt.

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1680. *July 2.* HUGH BROWN *against* MATTHEW M'KELL.

IN Hugh Brown, chirurgeon, his charge against Mr Matthew M'Kell, who ALLEGED he could not remove till his reparations were paid him; ANSWERED, —They were not absolutely necessary, and he had no warrant for them; and when he comes to pay the mail, he may crave retention, or he may pursue for them; but they cannot stop a removing.

The Lords upon report found the letters orderly proceeded, and decerned him to remove, reserving to him action for his reparations as accords.

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1680. *July 2.* JOHN MAITLAND *against* ROBERT BAIRD, &c.

ROBERT Baird, late Dean of Guild of Edinburgh, &c. are pursued by Mr. John Maitland, master of the game in Mid-Lothian, for eating wild-fowl contrary to the late act of Privy Council. ALLEGED,—Being burgesses of Edinburgh, they are not obliged to answer before the Sheriff; and the town hath a private jurisdiction.

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