

led, so that it was *res inter alios acta*, he ought not to be prejudged thereby, nor put to the trouble and charges of a reduction. No 18.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 171. Dirleton, No 416. p. 204.*

1680. July 20.

A. against B.

No 19.

THE LORDS found a reduction of a retour might now be by an ordinary summons, and not by a precept furth of the Chancellery, in Latin, under the quarter seal; and, that the act of sederunt, mentioned by Durie 1633, was in desuetude. See APPENDIX.

*Fol. Dic. v. 1. p. 170. Fountainball, MS.*

1688. July 26. Captain JOHN RAMSAY against GEORGE RAMSAY.

No 20.

CAPTAIN JOHN RAMSAY, immediate younger brother to the late Earl of Dalhousie, being abroad, his younger brother, George, serves himself tutor of law to the Earl's children. John returning home, and claiming his right, took out a brieve for serving himself tutor; whereon there is first an advocacion presented; and, being refused, a petition was given in to the Lords for George, the present tutor; whereon the Lords stopt the service, till both parties should be heard. And at a calling, it being *alleged, tutorem habenti tutor dari nequit*; and that George's gift standing, and being clad with long possession, it behoved to be reduced, and Captain John to prove that he was elder brother; the LORDS, considering that this was *notorium quod non eget probatione*, and that the tutory was *ipso jure* null, and needed no reduction, they summarily annulled it, and ordained John's brieve to go on.

Found that an erroneous service of a tutor at law might be summarily annulled without reduction.

On a new bill and hearing, it was *alleged*, That the Earl, in his testament, had made a nomination of tutors, and three a *quorum*; and there were three who actually now accepted, viz. Sir George M'Kenzie, Sir John Ramsay, and John Johnston of Poltoun; and Mr Moor, the Lady's brother, would also accept; though it was objected against him, that being an English-Irish he was uncapable. But the act of the *post nati* made by King James VI. habilitated him. The Chancellor was so offended with Sir George, that it moved him to say, that when the King had ado with him, he always pretended either conscience or prior engagements. *Answered*, They could not accept now after six years cessation and negligence, and suffering one to enter tutor of law who had no right; and Sir John Ramsay had virtually renounced the office by acting as factor under him, and never making his compts yet, and so could not recur now. *Replied*, No prescription runs against tutors nominate, neither by the common law, *l. 11. D. de testamentar, tutel.* nor by our decisions; 17th December 1631,