

1686. December 8. AGNES NISBET against ISOBEL and ESTHER SMITHS.

AGNESS NISBET, Lady Ninewells, in the reduction *ex capite lecti* pursued by Isobel and Esther Smiths, of the disposition of Brockhouse made to her by Mr Alexander Heriot, her former husband, as mentioned 26th November 1685, *voce TUTOR AND PUPIL*, having adduced Alexander Borthwick as a witness, that he came to kirk and market unsupported; it was *objected* against him, that his mother had a legacy or debt left her by Mr Alexander Heriot, and so he was concerned to depone for maintaining the disposition. *Answered*, The legacy was only paid out of the moveables. *Replied*, The moveables being *aliunde* exhausted, she was to get payment out of these lands. THE LORDS at first declared they would admit him *cum nota*; but thereafter they rejected him *simpliciter*.

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There being only two witnesses cited, of whom one died and the other was rejected, a new incident was granted.

1686. December 17.—AGNESS NISBET, in her cause mentioned 8th December 1686, gives in a bill, shewing, that one of the witnesses for proving her husband's coming to kirk and market after he gave her the disposition of Brockhouse, viz. William Hogg, was dead; and Alexander Borthwick, the other, was casten; and therefore craved the Lords would grant her a new incident diligence against others, in their place, being *casus inopinatus et improvisus*. THE LORDS granted her desire; and though a bill was given in, reclaiming against it, yet they adhered.

1687. January 19.—THE LORDS having advised the probation between Agnes Nisbet, now Lady Ninewells, and Smiths and Brantfield, mentioned 17th December 1686, they found it not proved that Mr Alexander Heriot acted by any deed of pro-tutory before the death of his sister, their mother, in 1673, and that he only then advised as a friend; so that he was not tutor at the time of the assignations, and consequently could not then *intus habere* of the pupil's means: And found some of the writs produced by Brantfield to prove his gestion prior to the assignations, were very suspicious, and their dates false; and therefore they ordained him either to go to prison, or else to find caution, under the pain of L. 1000 Scots, to appear when called, for using them: And did not yet proceed to advise Brantfield's probation in the count and reckoning, since he entered as their tutor, and upon the rental of their lands, and his omissions. (See WITNESS.)

Fol. Dic. v. 2. p. 190. Fountainball, v. 1. p. 435. 438. & 441.