

1741. *February 3.*

M'DOWAL and Others, Tutors of Janet Marshal, Complainers.

No. 8.

Found, That the abstracting of the person of a pupil was competent to be complained of, by the tutors, by summary petition.

The like had many years before been found, at the instance of the Tutors of Sir Robert Gordon, No. 10. p. 8910. *voce* MINOR.

*Fol. Dic. v. 4. p. 309. Kilkerran, (SUMMARY APPLICATION) No. 1. p. 524.*

1743. *July.* ALEXANDER HOME CAMPBELL, Supplicant.

No. 9.

Whether execution of an order of the House of Lords to pay a sum can be obtained by summary application?  
See No. 5.

The House of Lords having reversed a sentence of the Court of Session, with regard to John Sinclair, writer in Ediuburgh, "ordering and adjudging, that the said John Sinclair do forfeit and pay to the appelland the sum of £.500 Sterling; and further ordering, that the Court of Session do give all the necessary and proper directions for carrying this judgment into execution," the appelland, Alexander Home Campbell, applied to the Court of Session, praying for a warrant to cite the said John Sinclair, that he might be heard, and to decern for payment of the said sum awarded by the House of Lords.

A doubt arising among the Judges about the competency of such a summary application, instead of a regular process, they appointed precedents of the Court to be laid before them; which was accordingly done. And this produced an additional petition, praying now to have a warrant for letters of horning, for the following reasons: *1mo*, By the law of Scotland, the decrees of every Judge who has authority and jurisdiction within this kingdom, are entitled to the privilege of summary execution. By the present constitution of this part of the united kingdom, the House of Lords, standing in place of the Scots Parliament, in matters of appeal, they must have all the powers, in such matters, which the Scots Parliament enjoyed. And, in fact, they exercise these powers every day, by decerning, ordaining, and adjudging. In the present case, they have "ordered and adjudged, that the said John Sinclair do forfeit and pay to the appelland the sum of £.500 Sterling;" which is a clear decerniture for a liquid sum, capable to be put directly in execution. And as the House of Lords have a complete jurisdiction in Scotland, so far as concerns causes brought before them by appeal, there can be no reason why the judgment pronounced by them should not be put directly to execution; and to say that such a decree requires the interposition of the Court of Session, is, in other words, to say, that the House of Lords have no direct or immediate jurisdiction in Scotland. *2do*, In the decree itself, it is ordered, "That the Court of Session do give all the necessary and proper directions for carrying this judgment into execution." What is this, in other words, but ordering that the Court should direct letters of horning and poinding, or other proper executorials? For it is the judgment of the House of Lords which