

STIPEND, MINISTERS'. See MINISTER'S STIPEND.

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SUMMARY APPLICATION.

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1776. *June 26.* CALDWALL, Petitioner.

A TUTOR at law having applied to the Court, by petition, for the custody of the pupil's person, detained by an uncle by the mother's side, the Lords thought the application competent by summary petition.

The like, Kilkerran, p. 524, *M'Dowal, &c. tutors of Janet Marshall.*

Competent for Fraudulent Bankruptcy, Kilk. p. 525, and against a judge for oppression, Kilk. p. 526.

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1776. *August* . BEAUMONT *against* JOHN CRAIG, Messenger in Ayr.

A MESSENGER, having been employed to execute a caption, took it upon him, though not possessed of the ground of debt, *viz.* a bill upon which the diligence proceeded, to receive payment from the debtor, but, instead of paying it to the creditor, kept it in his pocket, and concealed that he had received it. The debtor, not suspecting any thing, was of new attached for the same debt, and obliged to pay it a second time, whereupon he, 16th July 1776, gave in a summary complaint against the messenger; and although the private complainer, on receiving satisfaction from the messenger, withdrew from the complaint and declined to proceed farther, yet the Lords ordained the messenger to give in answers for the sake of the public, and recommended to the King's counsel to take notice thereof, so far as the public was concerned, and to bring it to an issue. Answers were given in by the messenger accordingly, confessing the charges, but, from want of health, &c. endeavouring to excuse it. The Lords, this day, 25th July 1776, on advising petition and answers, deprived the messenger of his office, and sentenced him to a month's imprisonment.

And this day, 3d August 1776, refused a reclaiming petition without answers, and adhered.

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WITHERSPOONS, Petitioner.

UPON the statute 1696, c. 8, summary application is competent for obliging

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;