

their gifts in general, with all emoluments ; which are ever sustained as the emoluments are proven to be accustomed ; and the Act of Parliament anent the Lyon is not exclusive or prejudicial to the trumpeters more than to other offices.

The Lords found, That, if the payments made by the bishops were not ordinary and uniform, as a fixed due of 100 merks, they were not liable ; but, if it was a constant fixed duty, paid by all the bishops at their entry, and not by some more and some less, they sustained the libel, if it were so condescended, and allowed the pursuers warrant and diligence to adduce all evidents and adminicles thereanent.

*Vol. II, Page 872.*

---

1681. *June 23.* CRAWFORD of ARDMILLAN *against* The LORD BARGENY.

CRAWFORD of Ardmillan, having charged the Lord Bargeny for payment of a sum contained in his bond ;—he suspended, and ALLEGED Compensation, and payment of a part.

Which being found relevant, and a term assigned ; at the calling of the act to circumduce the term, Bargeny produceth some writs ; and Ardmillan, by supplication, ALLEGED, That they had no contingency with the reasons, but were produced of purpose that the cause might go to the roll of concluded causes ; which would make a long delay ere it came in of course ; and, if any thing proper were produced, the desire of this decret would be for the superplus. Which being remitted to the Ordinary, he reported, That there was nothing had contingency but a compensation of 32 merks. Whereupon the question arose, Whether the charger, allowing that, should have decret for the rest, without abiding the roll.

The Lords found, That, when acts were called for circumducing the term, when any thing was produced, the Ordinary, before he made a great avizandum whereby the cause was concluded, ought to allow the other party a sight of the production ; and, if the other party was content to allow the same, and that there was a clear superplus, the Ordinary ought to discern for the superplus, if the party required the same ; and, if the party would not allow the partial production, make avizandum thereupon only ; but if the party suffered avizandum to be made *simpliciter* in the cause, the Lords would not consider the cause before it came in course : otherwise they would be necessitated to advise causes twice ; *first*, whether the writs were contingents ; and *next*, whether the writs proved : which were most inconvenient, and contrary to custom.

*Vol. II, Page 882.*

---

1681. *July 14.* JAMES BARTHOLOMEW *against* MARGARET BARTHOLOMEW.

MARGARET Bartholomew having served an edict for choosing of curators before the Sheriff of Renfrew, James Bartholomew, her father, pursues advocacy thereof on this reason, That he, as father and lawful administrator, is the only

tutor to his daughter in her pupillarity, and curator in her minority; and, therefore, without his consent there can be no other curators chosen.

It was ANSWERED, That the daughter hath lands, not flowing from the father, with the rents whereof the father hath intromitted.

The Lords found, That the father, as lawful administrator, was curator; and therefore advocated the cause; but declared, that they would give the daughter curators *ad lites* for clearing accounts of the father's intromission.

*Vol. II, Page 890.*

1681. *July 19.* The CHIRURGEONS of EDINBURGH *against* The APOTHECARIES.

THERE were mutual declarators betwixt the chirurgeons of Edinburgh and the apothecaries there, for declaring their privileges.

The chirurgeons insisted, That it might be declared they had the only power of phlebotomy, and application of sear-cloths to dead bodies; and that they might prove the transgression of these privileges against the apothecaries, not only by apprehension of them in the fact, but by witnesses and their oaths; and produced very ancient seals of cause by the town of Edinburgh, giving them the privilege of blood-letting, and all manual operations upon men's bodies. And that they have been immemorially a deaconry, and one of the chief deaconries of the fourteen established by King James the Sixth his decret-arbitral: whereas the apothecaries are no deaconry, and enter not by apprenticeship, but were of late erected in a fraternity, and visitors appointed, that every person might not exercise pharmacy, but only such as the visitors should find skilled; so that no merchant or tradesmen in Edinburgh can be hindered to exercise pharmacy, if the visitors find him skilled; and therefore many of the ablest chirurgeons are also apothecaries, their employments being more congenious. And that the apothecaries' privilege in Edinburgh is by consent of the chirurgeons, by which they got liberty to make sear-cloths for dead bodies; which was not proper to them, but by the chirurgeons' consent; and with express provision, that the chirurgeons should only apply these sear-cloths.

The apothecaries insisted to declare that they had power of phlebotomy, upon occasion of any inward disease: and that the chirurgeons had only the power thereof in relation to wounds, ulcers, or outward diseases: and that they had power to apply sear-cloths, seeing it was the great interest of the lieges not to be put to the expenses of having both apothecaries and chirurgeons to double their expenses. And therefore, if apothecaries did prepare medicines for inward diseases, if the patient had need of letting blood, there was no reason to call in chirurgeons; and, if apothecaries made sear-cloths, the lieges should not be put to the expense of calling for chirurgeons to apply them; for chirurgery gives only right to manual application upon the bodies of the living, but the wrapping up of dead bodies requires no special skill, even though their fleshly parts were to be cut off for preservation of the corpse. *3tio.* By the custom of all nations, inquiry after encroachments upon particular trades is only by apprehension in