

1699. December 28.

COLONEL HAMILTON, for the Children of GENERAL DOUGLAS, *against* ROBERT COLVIL's Representatives.

No 11.

Warrant was craved against the representatives of a deceased agent, to get up papers summarily. This found incompetent, and that exhibition in the usual manner was necessary. The agent had been also factor for the parties.

THE children of General Douglas having sundry papers in the deceased Robert Colvil's hands, Colonel Hamilton, their maternal uncle and tutor, gives in a bill, craving a warrant to get them summarily up, on a receipt upon inventory, and on paying what was due to the said Robert by account. It was suggested, these papers came not into his hands as agent and writer for them, in which case they might be re-demanded by bill against a member of the house, but that he was also factor for managing their business, and some of the writs might be instructions of his accounts; therefore the LORDS found they could not be given up in this manner, but his heirs behoved to be called *via ordinaria* in an exhibition *tanquam quilibet*; though the children may have prejudice *medio tempore* by some of the debtors in the bonds turning insolvent; but forms must be observed.

Fol. Dic. v. 1. p. 152. Fountainball, v. 2. p. 76.

No 12.

A writer to the signet, in a dying condition, was found not obliged summarily to depone upon a petition, regarding his having writs belonging to the petitioner, who could not say that the writer had received these writs from him *ratione officii*.

1708. July 2.

ARTHUR TEMPLE *against* ALEXANDER CUNNINGHAM, Writer to the Signet.

ARTHUR TEMPLE having represented by bill, that several papers belonging to him were in the custody of Alexander Cunningham, writer to the signet, and craved a warrant for taking his oath anent his having thereof; in respect he, Mr Cunningham, was a member of the College of Justice, and a-dying, by whose death, without deponing, the supplicant would lose his mean of probation; The LORDS refused the desire of the bill; because, though members of the College of Justice be obliged to answer summarily, as to any thing that concerns their employment or trust from their clients; in other cases they cannot be more summarily convened as havers of writs, than the rest of the lieges, but must be insisted against *via ordinaria*, and allowed the common *induciae legales*.

Fol. Dic. v. 1. p. 152. Forbes, p. 258.

1710. January 11.

SIR PHILIP ANSTRUTHER of Ansterfield, *against* MR ROBERT GORDON, Writer in Edinburgh.

No 13.

A person found not to have forfeited his privilege as a member of the College of Justice, by residing in the Abbey to shun the diligence of his creditors.

SIR PHILIP ANSTRUTHER having pursued Mr Robert Gordon before the Bailie of Holyroodhouse, the defender procured the cause to be advocated upon this reason, That he was a member of the College of Justice, as being one of the Clerks of Chancery; albeit he had retired to, and was dwelling in the Abbey, as a sanctuary to shun the diligence of his creditors.

Fol. Dic. v. 1. p. 152. Forbes, p. 386.