

1708. *November 30 and December 17.* LADY GORDONSTON *against* SIR ROBERT GORDON'S TUTORS.

*November 30.*—A BILL was given in by the Lady Gordonston, representing, that Mr Kenneth Gordon, and other tutors to Sir Robert Gordon of Gordonston, her son, a pupil of twelve years old, had, by a writ under their hand, allowed him to stay with her till he choosed his curators at fourteen; for which end she had removed her family to Edinburgh, that he might be the better educated. Yet the said Mr Kenneth, and Cumming of Altyr, who, by his mother, the last Gordonston's sister, is the next heir to her son, had corrupted Mr Hugh Fraser, his governor; and, on Saturday, the 27th of this month, had seduced the boy, and carried him away in a coach towards England; whereby they had robbed her of her only son, and endangered his life in this boisterous cold weather, being but a tender youth, and labouring under a great cold; and seem to design to transport him beyond seas: which is such a cruelty that barbarians would not be guilty of, putting him in the power and disposal of the next heir, which is of the utmost consequence: For, though law trusts them with the administration of the fortune, yet it most wisely keeps a jealous eye over their access to the custody of the minor's person. And, seeing this bold attempt cannot bide the ordinary delays of justice, therefore she craves a summary warrant, from the Lords, to authorise Sir James Dunbar, her present husband, and William Innes, writer to the signet, and any others, to search for the said Sir Robert Gordon, the pupil, wherever he can be found; and to ordain all sheriffs, magistrates, and justices of the peace to concur with them in securing and arresting the persons of the said Sir Robert and Mr Kenneth Gordon, Cumming of Altyr, and Mr Hugh Fraser, his governor, and detain them aye and while they present and sist the said Sir Robert before the Lords, that he may be returned to his mother, or disposed of as the Lords shall think fit.

This being an extraordinary case, and expressly forbid by the *lex Fabia De Plagiariis*, and, in the prætor's interdict, *De libero Homine exhibendo*, they thought it fell under their cognizance, as the patrons, guardians, and protectors of pupils. And, though our Privy Council, when in being, redressed such abuses, yet that was not privative of the Lords' jurisdiction; therefore they granted summary warrants to search, apprehend, and secure the foresaid persons, and to put them under bail and caution to appear before them,—Sir Robert under the penalty of £150 sterling, and each of the others of 1000 merks. It was said, If they had carried him to Berwick, the order would signify little there, except the English justices pleased to obey it. However, the Lords did their duty in granting the warrant; and, that it might not be elusory by delay, they neither got it to see and answer, nor to abide the reading in the minute-book, but signed the order to be presently put in execution. It was craved, that the expense in recovering him may be taken off Sir Robert's estate; but the Lords superseded to determine where that should fall till the event.

I find, in the books of adjournal, at the year 1616, a criminal pursuit, at the instance of *Sir John Home of North Berwick* against *Sir Patrick Kirnside of East Nisbet*, for stealing away Adam French of Thorniedykes, a boy of fourteen years old, and marrying him to his own daughter; and concludes against him the *crimen plagii*. And, though the young gentleman compeared, disowning,

the process, and approving what they had done, that it was with his own consent, and not compelled, yet it was answered, That his age was easily influenced, and so his declaration not to be regarded. *Vol. II. Page 467.*

*December 17.*—The Lords resumed the complaint, mentioned *supra* 30th November 1708, made by the Lady Gordonston against Mr Kenneth Gordon, for abstracting her son ; and the Lords' warrant, then given them for arresting them, having overtaken them at Newcastle, in their way to Oxford, the mayor and other magistrates stopped them, in obedience to the Lords' order showed to them, and put them under bail to return to Edinburgh ; which they accordingly did. And young Gordonston appearing at the bar, and declaring he was carried away without his consent, and Mr Kenneth producing letters from two of his tutors, authorising him to dispose of his education as he saw best, and that his father had ordained he should be bred at Oxford ; yet, this being contrary to the obligation signed by Mr Kenneth himself, obliging him to allow him to stay with his mother till he was fourteen years of age, the Lords repelled the same. And Mr Kenneth submitting to the Lords' censure, and demitting his office as tutor and manager, they took no notice of his voluntary demission, but pronounced their judicial sentence, finding he had malversed in his office ; and therefore they deprived him of the same, and from any benefit or pension he might receive or enjoy thereby. And, being a member of the house, and so more immediately subject to the Lords' jurisdiction, they suspended him from the exercise of his office, as an advocate, during their pleasure. And, as to the expenses he had put the Lady to in recovery of her son, they remitted to the Ordinary on the Bills, to hear them thereupon. The Lords thought his demission and craving pardon no sufficient expiation for such a fault.

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1708. *December 22.* BOYLE and MONTGOMERY, &c. *against* CHARLES STRAITON, Brewer in Grange.

THE taxmen of the town of Edinburgh's imposition of two pennies Scots on the pint of ale either brewed or imported within the town, pursue Straiton for what ale he brewed and vented or sold within the town of Edinburgh ; and, during the two years of their tack, referred what he had imported in that space to his oath.

ALLEGED,—By the law, all such processes prescribe within three months ; so he is obliged to swear no farther back, nor burden his memory therewith : for, by the 12th Act, 1669, all processes anent embezzling customs or excise must be intended within three months, otherwise not receivable. And, by the English Act of Parl. 1689, no information can be made against a brewer, unless it be entered within three months after the offence, which is to avoid frequent swearing : especially seeing they have other checks and remedies, by gauging and surveying ; or, if imported from the country, they may stop at the port till it pay.

ANSWERED,—The excise duty to the queen does so prescribe ; but this is a duty given to the town for paying their debts, and falls not under the excise.