

1759. *February 20.* SCOT *against* SCOT.

[*Fac. Coll. No. 172.*]

THE mother of some infants, under the age of seven, to whom the father had nominated tutors, refused to let them go to Edinburgh to school, according to the direction of the tutors, but insisted to keep them with herself in the town of Cupar of Fife, and there to put them to school.

The Lords, upon a petition from the tutors, ordered the children to be given up, preferring their judgment to the judgment of the mother, in the matter of a school, but did not thereby hinder the mother from coming up to Edinburgh, and living with them, so as still to keep the custody of their persons till their age of seven, according to the doctrine of our law books.

1759. *June 15.* EARL OF DUMFRIES *against* ROBERT MENZIES.

IN this case it was the unanimous opinion of the Court, that if, in a process of reduction and improbation, an apparent heir was called, and a decret of certification recovered against him, that certification was good against everybody coming afterwards to have right to that subject, whether creditor or any succeeding heir; for they thought it was not necessary that the heir should have completed his title in order to be a defender in that process, because nothing was to be concluded against him, nor any subject to be evicted from him, but only a writing to be declared false and forged.

1759. *July 4.* LORD ABERDEEN *against* ———.

A PERSON having right to the lands A., but not to the teinds, wadsets both lands and teinds, and, upon his disposition, the wadsetter is infest in both, and upon that title possesses 40 years. The question was, Whether the reverser, by the possession of the wadsetter, had acquired a right to the teinds by prescription, in competition with any third party? And the Lords found, That, in respect he had no sasine in his own person, he had no title of prescription; and although the wadsetter, by his infestment, and possession consequent upon it, had acquired right to the teinds, in security or under reversion, yet the reverser had acquired no right of irredeemable property, because he had no title of that kind in his person. *Dissent.* Preside and Auchinleck.