

This being taken to interlocutor, the Lords found the letters orderly proceeded, without respect to the suspension, unless the party would yet find sufficient caution, if he succumb in the suspension. It was a little rub on the Lord, but much more on the clerk to the Bills. It were much to be wished that a subsidiary action were tried against the clerks of that chamber, for receiving so many irresponsal cautioners as they do, especially where the insufficiency is intimated to them. Yet I confess, if that were brought in practice it might make that place very dangerous, yea a snare, and might draw more burden on Sir William Bruce than he is worth, since it is impossible for him to know the condition and solvency of all the lieges in Scotland; and it is enough they have a designation by land, and, in vulgar estimate, are reputed worth the sum charged for at that time when they are received. *Vide* more of this *alibi*; *item*, No. 489, [Historical Volume,] *July 1676, Earl of Argyle and Maccleans.*

*Advocates' MS. No. 311, folio 127.*

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1672. *February 1.* SIR JAMES RAMSAY of Whythill *against* MAXWELL of Garnsalloch.

IN the action [mentioned in page 612,] between Sir James Ramsay and Maxwell of Garnsalloch, at number 302; the Lords found an act of curatory null, because three was declared to be a quorum, and three never accepted, and so their not acceptance (though the rest acted as curators) made the whole curatory to fall. But I suppose it will not be so in a tutory, where some, yea the major part, renouncing, the office accresces unto the rest, though the fewer: at least there will be more doubt in it. See Hadington, *December 12, 1609, Fairsyde and Adamsons.*

*Advocates' MS. No. 313, folio 127.*

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1672. *January 10, and February 1.* LADY MACCARSTON and CAPTAIN GUTHRY, her Husband, *against* The LAIRD of MACCARSTON, her Son.

*January 10.*—A MOTHER having alimeted her children, which she was not otherwise bound to do; *quæritur*, if she will get repetition thereof? It seems she will not, if she be yet a widow, *quia præsumitur inter ascendentes et descendentes præstitum ex pietate*, and so *cessat repetitio*; but the presumption fails *si præstita sint postquam super induxit vitricum vel si protestata fuerat.* *Vide omnino Nesennius, 34 D. de negotiis gestis.*

*Advocates' MS. No. 296, folio 123.*

*February 1, 1672.* In the action noted *supra* at number 296, betwixt Captain Guthry, who had married the Lady Maccarston, and the Laird of Maccarston, her son; the Lords found that a woman, having alimeted her children come to