Neither is this our law only, but also the practice of France, as Hadinton shews at the foresaid decision. And as for that allegeance, that the husband is perpetual curator to his wife, the same is false; seeing it appears, *ex parag. penult. ibique Vinnio, Instit. De Excusationibus tut. et curat,* that is only when she is within age.

The Lords repelled the allegeance, and sustained process at her instance against her husband; only appointed her a *curator ad hanc litem,* to concur with her. Craigie wrought mightily for her. See her Information beside me. *Vide* Stair's Practiques, Tit. *Of Marriage.* No. 10.

*Advocates' MS. No.* 390, *folio* 215.

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1673. *June.* CAPTAIN GILLEIS *against* GERBRAND CLAES.

IN the beginning of June, (about the 11th of it,) 1673, fell to be debated this point, If causes could be advocated from the Admiral Court to the Lords; upon this occasion: One Captain Gilleis, craving adjudication before the Admiral against Gerbrand Claes, skipper of the Bounder, a ship so called, brought up by him; the Admiral, before answer, allowed a conjunct probation, and granted a commission for examining some persons in foreign parts. The pursuers raise an advocation thereof to the Lords, upon the ground of iniquity. Against which it was objected, That the Lords could not advocate such a case from the Admiral, who was sole judge competent *in prima instantia;* yea, was supreme and independent, and a sovereign Court, and subaltern to none;* and that it was so designed in our acts of Parliament, particularly by the 15th act of the Parliament, 1609; and that this was not only our custom, but the practice of all nations in their Courts of Admiralty.

To which it was ANSWERED, That it was beyond all controversy but the Lords of Session were, in all civil matters, sovereign to all the civil Judges in Scotland, and, consequently, to the High Admiral, maritime causes being civil; so that if he should either err through ignorance, or commit iniquity by partiality, no doubt causes may be advocated from him before sentence, or may be suspended and reduced after sentence. And that appeal lies from them to the Lords of Session, appears evidently from the 12th act of Parliament in 1661: where also they seem to be ranked with other inferior courts; likeas, their actings are in the same way quarrellable as the Sheriff's decreet in perambulations may be, though by act of Parliament, the Sheriffs are sole judges to them in the first instance. Also, in some cases, decreets of the Commissioners of Plat are subject to the Lords' review and jurisdiction. Yea, Hope, in his Title of the Session, folio 131, tells that the Lords judged a spulyie committed on the sea *in prima instantia,* though the Admiral reclaimed, and only permitted him to sit and vote with them. And in Holland, where is the best regulated Admiralty in the world, trading being the

* The law of our country has very rationally provided a remeid from this Court, because the Judge has the tenth part of all found prize. Which argument W. P. makes use of, that if it were not conscience led him to assoilyie, he has more advantage by adjudging; but they answer this very easily, that the pensions or bribes he has from Holland, to free their ships, compenses his tenths ten times.

way they rose, and by which they must stand; that Court judges sovereignly and without appeal, where the sum in dispute is within L.50 English; but if it exceed the same, it may be carried from them to the States General and their Council; as William Aglonby, in his Present State of Holland, p. 138, lib. 2, cap. 18, tells: so that it appears that Court is not everywhere incontrollably sovereign.

The Lords inclined to find, that if the Judge-Admiral commit iniquity, they may and will advocate from him: and though they were clear enough in it, yet out of respect to the said Court, they, without passing the advocation, ordained the cause to be debated upon the bill, which was a passing it upon the matter; as also found that he assumed too much power to grant commissions before answer to both parties for a mutual probation: both upon the account that court should be summary, and not delay strangers or seamen by such tedious interlocutors; as also, because, though the Lords themselves practised the same frequently *ex nobili officio*, it was not proper nor competent to others to venture upon it, especially W. Pringle, but that they should astrict themselves more to form. Which was a strain of vanity to appropriate that method of procedure to themselves. See the informations of this cause beside me.

*Advocates' MS. No.* 391, *folio*, 215.

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1673. *June.* ROBERT FAW and LORD LINDSAY *against* FOTHERINGAME of Poury and LORD BALMERINO.

IN an action pursued by Robert Faw and my Lord Lindsay *contra* Poury Fotheringame and my Lord Balmerino, the following case fell to be debated, Whether or no bye-gone non-entry duties be due to the superior's executor, or to his heir, or any other singular successor standing infeft in the right of superiority. It was not questioned, if the superior had obtained a decreet of special declarator of non-entry in his own time, but then the same became moveable, and fell under his executry; but all the doubt was, where he died, the same being undeclared: in which case it was contended for my Lord Lindsay and his donatar Faw, that they transmitted to the heir and singular successor; because none could pursue the declarator but allenarly one who stood infeft in the superiority, and could give entry to the vassal, which did not quadrate to the executor; that the superior had no *jus perfecte quæsitum* to these obventions and casualties of superiority, before declarator; and, before that, they are *jus individuum*, and not seperable from the right of superiority itself, and so must be carried with it, aye till they be declared, before which time they cannot be properly said to be *in bonis defuncti Superioris.*

To which it was ANSWERED, that the superior, during the non-entry, was *loco proprietarii*, and the non-entry duties came in place of the mails and duties of the lands; and, therefore, as the mails and duties owing before the vassal's decease fall under his executry, so must thir non-entry duties fall under the superior's: and seeing it is not controverted but they are so conveyed after declarator, the analogy of law will dispose of them in the same manner before it; seeing a decreet of declarator alters not *jus debiti*, the nature of the debt, and it is as well due before as after, else it could not be declared in his favours: that the casualty of ward