

* * * Spottiswood reports the same case :

No 8.

JAMES BOYLE, Procurator-Fiscal of Glasgow, being executor decerned to Agnes Mullikin, convened her husband, as intromitter with her goods and gear, for payment of certain sums of money. This action was craved to be advocated from the Commissary of Glasgow, because the pursuer and the Commissary were brethren. *Alleged*, That he pursued only *ratione officii*, being Procurator-Fiscal, and that the benefit would never accresce to the nearest of kin. Likeas, he was content to renounce all benefit that might fall to him there-through; and further, he did refer the verity of the debt to the defender's oath. THE LORDS did advocate the cause, in respect he pursued as executor decerned, and had not surrogate any in his place, notwithstanding of his office.

Spottiswood, (ADVOCATION.) p. 11.

1682. *March.* HUGH MAXWELL *against* LORD NEWTON.

No 9.

FOUND, that by the late act of Parliament*, the degrees of affinity reached only to that of father, son, and brother; and not to nephew, brother's son, &c. seeing properly those in that degree are either consanguineans, or absolute strangers; *e. g.* a brother-in-law's son by my sister is not *affinis*, but *consanguineus* to me; and a brother-in-law's son by another wife than my sister, is not *affinis* to me, but an absolute stranger, seeing *affinitatis nulla affinitas*: it was *pleaded*, That by the said act only the affinity of *socer, levir, gener*, father, brother, and son-in-law, was meant, which arises by a conjunction with a consanguinean, and not the affinity of *vitricus, privignus, &c.* step-father, step-son, &c. But this point was not determined; and it was also debated if a Judge might be as well declined upon his wife's account, as upon his own.

Fol. Dic. v. 1. p. 230. Harcarse, (DECLINATORS.) No 399. p. 106.

1687. *December.* SIR WILLIAM BINNY *against* HOPE.

No 10.

THE LORDS repelled the declinator against my Lord Harcarse, that Sir William Binny the pursuer was brother-in-law to my Lord, by marrying his Lady's sister, and was also uncle-in-law to my Lord's Lady, who was then deceased, but had left a child of the marriage behind her; that relation being only *affinitas affinitatis*, which the act of Parliament extends not to. And the like declinator in another case, against the said Lord Harcarse, that Hugh Wallace and he had married two sisters, was rejected, the Lady being dead. The first declinator was proponed by Sir Thomas Hope of Kerse, and the other by Lord Forrester; the like will hold as to being witness.

Fol. Dic. v. 1. p. 230. Harcarse, (PROBATION.) No 806. p. 226.

* Act 13th Parl. 1681.