

years, (though she was at the time clad with a husband,) and made no conditions with them, could have no repetition, because there the presumption of donation takes place; but if they were infants who were not capable of pactioning and entering into terms, then the mother's alimending them, and not declaring *quo animo* she did it, prejudices her not, but she may thereafter crave the same. I think it ought also to be considered, if the children had *aliunde* sufficient means whereon they might have been alimended according to their rank and quality; in which case, I think the presumption *quod mater vellet donare* is weak; but if she life-rent the whole, or the greatest part, then the presumption is pregnant against repetition.

See this and other two points in the informations beside me. *Vide infra February 1676, No. 471, § 3, [Viscountess of Oxenfuird against her Son.]* See *February 18, 1679, Sibbald of Kair.*

*Advocates' MS. No. 314, folio 127.*

1672. *February 1.* DAME ANNA FOULLS *against* THE CHILDREN OF PRESIDENT GILMOUR.

IN the action pursued by Dame Anna Foulls against the children of President Gilmour, the Lords inclined to find there ought to be a representation in moveables, on the same very reasons that it has been hitherto received in heritage; so that if one die leaving two brothers or two sisters behind him on life, and one of them die before confirmation, his or her children *jure representationis et stirpis* will come in and carry away the equal half of the executory from the brother or sister still on life: but if, at the time of his decease, he leave only one brother on life, and nephews by another who predeceased, the question will be greater, whether then the brother's children will come in *pari passu* with their uncle, to the executory. But for the first case, they say it was already determined in 1663 or 1664, between Bells and . Sure I am, before that time it was a novelty and heresy in our law, and contrary to its most uncontroverted principles.

*Advocates' MS. No. 315, folio 127.*

1672. *February 2.*

ANENT PROTECTIONS.

IT was questioned this day amongst the advocates, if a protection could defend one from a caption taken out against him upon a decret for exhibition of writs. It seemed to be out of question that it would not, seeing a protection defended his person against civil debts, but not from such deeds as these.

It was also doubted whether a man at the horn, who has not *personam standi in judicio*, obtaining a protection, so redintegrates his state that he may pursue or defend. And it was thought it did not, because protections being odious should