

said reply of majority, which only was admitted, the pursuer ought to be allowed to prove his reply, without conjunct probation to the contrary.

Act. Sir David Falconer. *Alteri*, ————. Hamilton, *Clerk.*—*In præsentia.*
Page 166.

1676. *June 22.* LAMINGTOUN *against* RAPLOCH.

A SUSPENSION being craved, upon that reason,—That the charger had been curator, and, *ante redditas rationes*, could not charge him with any debt :

It was ANSWERED, That the complainer being to be married, he desired the charger and some others to be his curators, to the effect they might authorise him to contract ; and the charger had never intromitted.

Some of the Lords were of opinion, that, if it could be verified by the complainer's oath, that the charger had no intromission, and that these that intromitted were responsible ; in which case, by the civil law, there is no *actio tutelæ*, but against those who intromitted ; the others who had not intromitted, being only liable *in subsidium*, the said reason should not be sustained. But it being pretended, that, by our custom, all tutors and curators are liable, whether they intromit or not, without distinction ; and that pupils may take themselves to any of them ; though it was not made appear that the said point was ever debated or decided ; yet the Lords ordained the complainer to give in a charge against the curator ; and the count to be discussed upon the bill.

Glendoich, *Reporter.*

Page 177.

1676. *July 5.* Dame MARION LESLY *against* Sir JOHN FLETCHER.

SIR John Fletcher, being obliged by contract of marriage, to provide Dame Marion Lesly, his wife of a second marriage, to the liferent of a sum of £10,000, did thereafter infest her in the lands of Gilchristoun, being of more value and of a greater rent : whereupon she having obtained a decret against the tenants, the Lords found her right, being granted *stante matrimonio*, and thereafter revoked, null ; in so far as it exceeded the provision in her contract of marriage : and sustained her decret only effeiring thereto : and ordained her to be liable for the superplus, until the said sum of £10,000 should be employed for her liferent, conform to her contract of marriage.

Forret, *Reporter.* Mr Thomas Hay, *Clerk.*

Page 181.

1676. *July 5.* SIR RICHARD MAITLAND of PITRICHIE *against* the LAIRD of GEIGHT.

SIR Richard Maitland of Pitrichie, having obtained a gift of recognition of

the estate of Geight; there was thereafter a minute, betwixt him and his father and the Laird of Geight, whereby it was agreed that Pitrichie, who, and his predecessors, had an ancient wadset of the lands of Achinreive and others, being a part of the said barony, should have the reversion discharged by Geight; and that Geight should give him a new right of the said wadset-lands, irredeemable, and holden of the King; and should pay to Pitrichie, for the charges in obtaining and declaring of the said gift, 4000 merks: and that, on the other part, Pitrichie should dispone to Geight the rest of the estate, and the right he had thereto by the said recognition.

Thereafter Pitrichie, having intented declarator for nullity of the said minute, upon pretence that Geight did refuse and fail to perform his part, did obtain a decret; and did enter into a bargain with the Earl of Aboyn, and did dispone to him a considerable part of the said estate, that, by his power and interest in the country, he might be maintained, and be able to enjoy the rest. But, before the granting of the said right to Aboyn, Geight had intented a reduction of the said decret of nullity; upon that reason,—That the said decret was given, in respect he had not the writs at that time in hand to produce, and to instruct that he was able to give a right of the said wadset-lands, to be holden of the King; and that they were now found upon search of the registers: so that he had not been *in mora*; and the not-production of the said writs ought not to be imputed to him, but to the confusion of the times; his writs being scattered, and his father having been long time a sufferer and prisoner, for serving the King.

The Lords found, That the said decret, being in effect upon a certification for not production, and Geight condescending, and offering to instruct, that he had not been negligent, and the occasion and manner that the said writs were not in his hand; and how he had recovered the same; he ought to be reponed against the same: And that, by the reduction, before the granting of the right to Aboyn, it was *res litigiosa*; and Aboyn ought to be in no better case than Pitrichie.

Page 181.

1676. July 11. BISHOP of DUMBLAIN *against* KINLOCH of GILMERTOUN.

In anno 1620, his Majesty's grandfather did annex the deanery of the chapel-royal to the bishopric of Dumblain; and did mortify thereto an annualrent of ten chalders of victual out of the lands of Markle and Traprane: By virtue of which right, the bishops of Dumblain have ever since possessed the said annualrent, until 1638, that the bishops were suppressed. And thereafter, Mr Alexander Henderson, and Mr Robert Blair being provided thereto, as his Majesty's chaplains, did continue in the possession of the same, till the bishops were restored in 1661; and since, the Bishop of Dumblain was in possession of the same. But Francis Kinloch, now heritor, though he had been in use of payment of eight chalders of victual, as a part of the said annuity, out of his lands, since he acquired a right to the same; being charged at the instance of the said Bishop, did suspend upon that reason, *viz.*—That the said annualrent was wadset by the Earl of Bothwel, in the year 1587, to Mr Thomas Craig, for 7000