

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.*  
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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.*

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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.*

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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