

against him ; for, *non memini* whether she signed or not never improves : and witnesses in contracts do not always look on at the parties' signing ; it is enough they do not contradict or reclaim.

The Lords thought the witnesses had minced and concealed the true matter, for fear of being found liable when they sign as witnesses to one whom they saw not subscribe, nor own the subscription ; as was found in 1691, between *Peady, Young, and Mr Hugh Blair*, upon the 5th Act of Parliament 1681, discharging all witnesses to subscribe, except in one of these two cases ; and yet this case did not afford sufficient evidence of her subscription's being false : therefore they only declared the contract of marriage null ; seeing the witnesses confessed they did not see her subscribe, as was their duty to have done.

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1698. *February 22.* THE EARL OF DALHOUSIE CHOOSING CURATORS.

THE present Earl of Dalhousie, (his elder brother being murdered in Flanders,) compares before the Lords to make a nomination of his curators, and choosed Brigadier Ramsay, his uncle ; but, in regard he was not present to give his oath *de fidei*, it was desired that Sir John Ramsay might be allowed to swear for him, as is practised in some other places ; and the doctors call it *in animam alterius*, where they have a special letter of procuracy and warrant under his hand to that effect.

The Lords considered that had not been allowed in our practice ; but they granted a commission to take his oath in England or Holland, where he was ; and empowered the Clerk of the Bills, in the vacance, for the time, on the returning his oath, to consider and accept the caution that should be offered.

The week before, the Lord Elcho choosed his curator in the Inner-House, *in presentia* of the Lords ; and so did Sir James Inglis of Cramond.

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1698. *February 22.* HARY BARCLAY, PETITIONER.

HARY Barclay, son to Barclay of Hilton, being a minor, and having some heritage beside Kirkaldy, which came to him by his mother, gave in a petition, representing, that his father was his administrator and tutor of law, but was bankrupt and in prison, and would dilapidate his means and rents if he were suffered to intromit ; therefore craved he might be allowed to choose another curator in place of his father, who might manage his affairs, and find caution.

The Lords thought it reasonable there should be a remedy in such a singular case ; but, not to divest him of his parental right without a trial, they ordained the father to be heard before the Ordinary on the Bills ; even as a husband, though curator to his wife, yet, if he be *vergens ad inopiam*, and she having an action against him, for securing her liferent, the Lords will authorise another to be her curator in such a circumstantial case.

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