And the said Act of Parliament, as all Acts of Parliament, especially such as are correctory *juris communis*, ought to be taken strictly; and cannot militate, but in the case therein intended and expressed. And the said Act is upon special considerations, in relation to the Lords of Session; and particularly, of the eminent integrity that is presumed, and ought to be in the supreme judicatory.

The Lords, without entering upon the debate of the said other points, turned the decreet in a libel.

Forret, *Reporter.* ———, *Clerk.*

Page 148.

1675. *December* 3. Colonel BARCLAY *against* ARBUTHNOT.

COLONEL Barclay, having produced, *in termino*, a relaxation unregistrate, for proving a defence, founded upon the relaxation:

It was ALLEGED, before the Lord of the Outer-House, that the term ought to be circumduced:

Whereunto it was ANSWERED, That it could not be circumduced, since he had produced the said paper; and *avisandum* ought to be made, that the Lords might advise whether it proves or not.

The Lords found, That, in such cases, where possibly a blank paper, or a paper of another nature than that which was to be produced, is produced *in termino*, the judge may and ought to circumduce the term; where it is evident, that such papers are produced, not to satisfy, but to delay and abuse the judge. But, in this case, seeing it was found that Colonel Barclay had produced sufficiently *ad victoriam causæ*, so that there may be some ground of doubt and debate; the Lords found, That it was competent only the time of the advising.

Gosford, *Reporter.*

Page 151.

1675. *December* 7. SHERIFF of PERTH *against* ————.

IT was found, That the late proclamation, remitting fines due upon the contravening of penal statutes, ought to be extended to riots and fines, upon the committing of the same before the said proclamation; the persons being thereafter convicted before the Sheriff.

Glendoich, *Reporter.*

Page 153.

1675. *December* 21. ———— *against* ————.

A FATHER, having made a disposition in favours of his son, reserving his own liferent, with power likeways to dispose of what he had provided, did appoint certain persons as curators, and to have administration of what he had

provided, during not only the pupillarity, but the minority of his son: and nevertheless his son, having chosen curators after his pupillarity, there was a competition betwixt the said curators, and the person appointed by the father to administrate.

The Lords found, That the son, as to his person, was not *in potestate* of either of the said competing curators; seeing *curator non datur personæ sed rebus.* And, as to any other estate belonging to the minor, any other way than by the provision of his father, the same was to be governed by the advice of the curator, named and chosen by himself.

But the Lords demurred as to that question,—*viz.* Whether the father might affect the right granted by himself, with the quality and provision foresaid, that the person named by him, should have administration of the estate disponed by him. And some were of the opinion, that there is a difference betwixt a stranger and a father; in respect strangers are not obliged to give; and what they are pleased to give, they may affect and qualify their right thereof, *sub modo*, and with what provisions they think fit: whereas a father has a duty lying upon him in nature, to provide his children; and, by the law, he may name tutors to his children; but, after pupillarity, he cannot put them under the power of curators without their own consent: and, if this practice should be allowed, there should hereafter be no election of curators. They did also consider, that the right granted by the father was in effect *donatio mortis causa;* seeing the father retained possession, and a power to revoke. And it seemed, that as the father could not in testament make curators, so he could not do the same by a legacy, or any such donation *mortis causa.*

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1676. *February* 8. ——— *against* ———.

The Lords found, That when creditors did compear in adjudications, not being called, they ought to be admitted with that quality, that since the course of the adjudger is stopped by their compearance, the adjudger shall be in the same case as to any adjudication at their instance, as if both adjudications were within year and day.

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1676. *February* 24. ——— *against* ———.

In a pursuit against a minor, it was ALLEGED, *Quod non tenetur placitare*; because minor. Whereupon there did arise two questions, *viz.* 1*mo.* Whether the said exception, being a dilator, ought to be verified *instanter?* As to which, it was found by the Lords, That minority, being in fact, could not be verified *instanter.*

2*do.* It being REPLIED, That the defender was major, which was offered to be proven, and a conjunct probation being desired by the defender, it was nevertheless found by the Lords, That the allegeance of minority, being elided by the