

than in a regular. In the case of *Malcolm* there was, from the circumstances of the fact, a *penuria testium*.

PRESIDENT. Had the proof been as to a public marriage, there would have been no need for considering the validity of such an objection. Shall more latitude be given in the case of an irregular marriage?

HENDERLAND. As far back as the records of the Commissary Court go, near relations have been admitted, not to prove the fact of celebration, but to prove circumstances of acknowledgment. A case may be figured when, by the death of witnesses unexceptionable, a regular marriage may be proved by the evidence of a father and mother.

On the 10th July 1790, "The Lords found that the witnesses in question cannot be admitted."

Act. D. Cathcart. *Alt.* W. Stewart.
Reporter, Dreghorn.

1790. November 18. The UNIVERSITY of GLASGOW *against* SIR WILLIAM MILLER.

CAUTIONER—PERSONAL AND TRANSMISSIBLE.

A cautionary obligation does not fall by the cautioner's death, but continues upon his heirs.

[*Fac. Coll. X. 302; Dict. 2106.*]

JUSTICE-CLERK. A man, becoming cautioner for a factor, binds himself and his heirs: he may, on paying up arrears, liberate himself, and so may his heirs. As to the practice of banks in renewing cautioners, there is good reason for it: the heir may not be so solvent as the original cautioner; and, besides, summary diligence cannot go against the heir of a cautioner.

On the 18th November 1790, "The Lords repelled the defence of the heirs of the cautioners."

Act. A. Rolland. *Alt.* A. Wight.
Reporter, Swinton.