payment of the annualrent of the sums lent upon the wadset; as in law their father who had the back-tack was liable, so the children who had a sub-tack were likewise liable to the wadsetter: and, therefore, the curator was liable for negligence, not having served inhibition against the heir of Wolmet, who was bound to relieve them of the back-tack duty; this estate, *medio tempore*, being comprised by lawful creditors. *2do.* The children were pursued for payment of the back-tack duties, and an arrestment executed, upon the dependence, against Andrew Ker of Moristoun, who was their tutor, and had intromitted with the whole coal rent belonging to them, which was an actual distress. *3tio.* Upon that ground, that the Major, being curator, did purchase the lands of Wolmet from the heir, who was bound to relieve them, and thereby prejudged them of all hopes of relief.—

It was ANSWERED to the first, That, by the sub-tack, the children being only obliged to pay 1200 merks of the back-tack duty, for which they were never distressed, but, on the contrary, the tutor of the heir, and children, having the intromission with all the estate, and having more of the heir's estate than would pay the superplus of the 1200 merks,—the law could never presume that the Major was negligent, until an actual distress.

It was ANSWERED to the second, That the arrestment and dependance, at the wadsetter's instance, was only for their 1200 merks, payable by them. And to the third,

It was ANSWERED, That any purchase made by the Major, during curatory, was so far from being a prejudice, that it was an advantage to the children; seeing the heir was altogether ruined in his fortune, and imprisoned for debt, and had agreed to dispone the reversion of his estate for a less price than the Major gave.

The Lords did refuse to sustain the article upon the first and last reasons; but, as to the second, before answer, they ordained the pursuer to produce the arrestments and summonses,—which was the distress alleged upon,—that they might see them, if they were used for recovery of the whole back-tack duty, or the 1200 merks only payable by them; without which the curator could not be condemned for negligence, for not serving an inhibition against the heir.

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1674. *June* 18. MARGARET SCRYMGER and DOWGALL M'PHERSON *against* The EARL of NORTHESK.

THERE being a dependence of an action at Margaret Scrymger's instance, against the Earl of Northesk, wherein Dowgall M'Pherson, her father-in-law, was compearing for his interest; there was a bill given in, craving that the said Dowgall being under caption, and residing within the Abbey for eschewing the execution thereof, he might have a protection for his person to attend the said action, being the only person who could inform; his good-daughter being but a young gentlewoman, who had no knowledge of the business of law.

It was ANSWERED, That the granting of protection to any person who was denounced rebel, and under the hazard of caption, was prohibited by the Act of Parliament; and albeit the Lords did some time grant the same, to defenders

who were cited to give their oath, for a certain time, within which they might come in to depone, and return to their own dwelling; yet they never did grant a protection to a pursuer, that he might have *personam standi in judicio*, and follow forth actions at his instance as a free liege.

The Lords, notwithstanding of the answer, did grant a protection until the end of the session.

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1674. *June* 24. PATERSON *against* JOHNSTOUNE Son to the Laird of Lockerbie.

IN a suspension, raised at Johnstoune's instance, who was charged upon a bond of borrowed money, granted by him to Paterson, upon this reason,—That the said bond was granted for bygone maintenance due by his father, who, upon decreets recovered against him for the same, was under caption; and that, by the late proclamation, all maintenance was discharged, except where the bond was given by the heritor, who was debtor: but so it is that the suspender's father, being only debtor, had never given bond; and therefore, as he was free, so his son could not be decerned to make payment:—

It was ANSWERED, albeit this bond was given for maintenance due by the father, against whom several decreets were recovered, which the charger did accept as a sufficient security for payment; and had no more to do with the father; and so it could not fall within the proclamation; and the granter ought to seek his own relief, wherein the charger was not concerned.

The Lords did find the letters orderly proceeded, notwithstanding of the reason; and found, That, having voluntarily given bond in his own name, he ought to fulfil the same; and it did not fall within the case of the act of the council, the father not being distressed.

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1674. *June* 24. HENRY MURRAY of LOCHLEAN *against* SIR WILLIAM MURRAY of AUCHTERTYRE.

IN a pursuit at Lochlean's instance, as assignee by the heirs of Mr John Malloch in and to a back-bond granted to him by Auchtertyre, whereby he was obliged to lead a comprising for his own debt, and the said Malloch, for their security of the sums of money due to them; and in case of sale of the lands, to dispone as much thereof to the said Malloch as would be effeiring to his sum, principal, annualrent, and expenses; as likewise bearing, that he should not dispone without Malloch's consent. Whereupon he craved, that, the comprising being now expired, Auchtertyre should be decerned to dispone to him a full proportion of the said lands, as, Auchtertyre's own sums and his being calculated, would fall to his share.

It was ALLEGED, That the back-bond could not furnish any such action; because, Murray of Buchantie, being the common debtor, against whom several creditors were leading comprisings, Auchtertyre took upon him the trust volun-