

1554. June 1.

A. against B

No. 34.

Gif ony minor havand ane tutor be summonit be ony man, and efter the time of the executioun, and befor the day of compeirance, he happin to complete the time of tutorie, and cheisis curatouris, the said executioun maid aganis him and his tutor is not sufficient, and thairfoir the said minor and his curatouris aucht to be summonit of new agane.

Balfour, p. 120.

1555. February ult. PRIOR of ST. ANDREW'S against KINNIER.

No. 35.

Anent the action pursued by the Prior of St. Andrew's against the Laird of Kinnier; this was the cause: The E. of K. Buchan annalized lands to the L. of K. under reversion, and after the said E. made his son and apparent heir his heir and assignee to the said reversion: The said son died before his father, leaving behind him ane young daughter unborn when he died, which was his heir. It was contracted betwixt the tutor in name of the said daughter on the one part, and the Prior of St. Andrew's on the other part, That the tutor in name of the said daughter should make the said Prior donatar in the said reversion, and transfer all right in him for redemption of the said lands: The said Prior delivered to the said daughter a reversion of the said lands conform to the first reversion in all points, which contract was fulfilled in all things by the said parties, *hinc inde*; and the said Prior, by virtue of the said donatie, transferred and warned the said L. to receive his silver, and fulfilled the points of the reversion in all things for his part, and because the said Lord refused to receive the silver, the said Prior called him before the Lords to hear the lands lawfully redeemed. The said Prior being called, it was alleged by the said L. that an assignee to a reversion might not make a donatar, nor transfer the right in any other, because it was *res immobilis*; which allegiance was repelled by the Lords.

While the pupil is under seven years of age, there is no need of his subscription.

The tutor may constitute a donatar to a reversion *sine decreto*, although it be *res immobilis*.

Also it was alleged by the L. that the said donatar and transferring was not subscribed by the pupil nor by ane notary, conform to the act of Parliament; which was repelled by the Lords, because the pupil was not seven years of age.

And also it was alleged, that the tutor might not make in name of the pupil and donatar of any greater degree or quality, nor the said Laird; which was repelled by the Lords; and albeit it was alleged by the said L. in the minority of the bairn, nor yet the bairn without consent of the tutor, might make no donatar to any reversion, because it was *res immobilis*, which was repelled.

Also it was alleged, that the pupil might not change the sub-tenant for another during the time of his pupil's minority, without authority of a Judge; which allegiance was repelled by the Lords.

Maitland MS. p. 117. and 118.