

That, as there was no authority to manage the minor's estate, he now prayed the Lords to name him factor *loco curatoris*, and to empower him to lay out money for bringing home the minor.

No 12.

"THE LORDS discharged any further procedure in the action, and appointed the petitioner factor, granting warrant to him to lay out a sum of money for bringing home the minor." See TUTOR AND PUPIL.

Petitioner, *W. Grant.*

D. Falconer, v. 2. No. 156. p. 180.

S E C T. II.

Minor's privileges.—Oath.—Process at a minor's instance to sell land for payment of his debt.—*Privilegiatus contra privilegiatum*.—How far liable for goods and money furnished to him.—And for money borrowed by his tutor.—May chuse the place of his residence.—Entitled to examine the state of his affairs.—Can a minor pupil contract marriage?—Can a minor be a tutor?—An arbiter?—or a Commissioner of Supply?

1548. June 9.

Mr JOHN HENRYSON of —, against JAMES HENRYSON of Fordel.

NA persoun may be ane tutor to ane pupill be the law of this realme, except he be of 25 zeiris compleit; zit nevertheless, albeit he be within the said age, and zit of sufficient judgment, and qualiteis, the King may dispense with him touching his les age; and gif he be tutor of law, the King may charge all persounis that sall happin to pass upon the inqueist for service of the brief of tutorie, to serve him tutor, notwithstanding of his les age; certifying thame, that throw doing of the samin thay sall incur na danger or errour thairthrow.

Fol. Dic. v. 1. p. 576. Balfour, (TUTOR.) No 21. p. 118.

No 13.

The King may dispense with the minority of a tutor in law, and may charge the inquest to serve him notwithstanding the act 51. Parl. 1474.

1558. May 9.

DISHINGTON against HAMILTON.

ANENT the action pursued by Thomas Dishington, tutor testamentar of Andrew —, against Matthew Hamilton for deliverance of the heirs of Andrew to the said Thomas as tutor foresaid, it was desired by the said Matthew, that the said Thomas should produce his title where he was tutor. The said

No 14.

The nomination of a minor to be a tutor is not null, but he may commence his

No 14.
administra-
tion when he
becomes of
age.

Thomas produced an instrument that he was made tutor by him to whom the bairns succeeded as heirs. It was *alleged* by the said Matthew, That that was no sufficient title, without he had been made tutor testamentar in a confirmed testament, or else that the said instrument had been confirmed and ratified by the Judge Ordinary; which allegiance of the said Mathew was repelled by the LORDS, and the title found good enough by the said instrument allenary.

And also it was *alleged* in the said action, for the part of the said Mathew, That howbeit the said Thomas was made tutor as said is, yet he may in no way be tutor of the law, because he was not of perfect age when he was made tutor required of the law. It was *answered* by the said Thomas, That howbeit he was not of perfect age at the time when he was made tutor, yet he was now of perfect age, and long before the moving of the plea; and howbeit the time of his minority the administration of his office was suspended, yet the office in itself was never null; but how soon he came to perfect age he came to the administration of the said office; which allegiance of the said Thomas was found relevant by the LORDS, and that he might use the said office of tutory notwithstanding of the allegiance made in the contrary.

And also it was *alleged* by the said Mathew, That notwithstanding the tutory foresaid, yet the bairn and heir foresaid should not be delivered into the hands of the said Thomas as tutor foresaid, because when the heir first raised her brieves to be served in her lands and heritage, the said Thomas proponed bastardy against her, alleging her to be a bastard, and therethrough would have denuded her of her heritage; and compelled her to plea the said matter of bastardy in the spiritual court, where she obtained sentence for her, from which sentence the said Thomas appealed, and so the matter depends as yet; and also the said Thomas pursues and alleges, that the whole heritage pertains to him by reason of tailzie, and by that manner would denude the pupil of her whole heritage; and has moved diverse other pleas, to the hurt and wraik of the said pupil; which allegiance was admitted by the LORDS, and decerned that the pupil, heir foresaid, should not be delivered to the said Thomas for the cause and suspicion foresaid.

Fol. Dic. v. 1. p. 576. Maitland, MS. p. 126.

* * * Balfour reports this case :

ANE tutor testamentar may be made be the father, or uther havand powar thairto, under forme of instrument allenary, without ony testament or latter will; and gif the tutor be of les age the time of the said constitioun, he efterwart cumand to perfyte age of 25 zeiris, may enter to the administratioun of the office of tutorie.

Balfour, (TUTOR.) No 3. p. 115.