1558. *May* 9. THOMAS DISCHINGTON *against* MATHOU HAMILTOUN.

No. 40.

Ane minor beand past sevin zeiris of age, sould not be in the keiping of his mother thairefter; because his tutor, gif the pupill have allanerlie blanche landis, and the tutor be not narrest to succeid to him, sould have the keiping of his persoun, togidder with his tour, fortalice and manor-place, gif ony he hes, until his age of xiiij. zeiris compleit, except the tutor do dilapidat and waist the said pupil's gudis and geir; for he, beand a manifest abuser and waister thairof, sall not have his persoun in keiping; and it is to wit, that the tutor dative has the keiping of the pupill, and is preferrit thairintill to the narrest kinnisman, as to the father brother; bot the pupil's persoun sould not be in the keiping and custodie of the tutor, gif the tutor be narrest to succeid to him, or gif he has movit ony action or pley aganis him, tending ony wayis to the depriving him of his heritage or landis.

Balfour, p. 337.

*** The names of other cases are here given by Balfour, by which these propositions had been ascertained; viz. 1551, February 18, George Clepan against the Laird of Weymis; 1561, March 29, June 7, James Spalding against James Fleshour; 1548, May 16, Johne Crawfurd against Elizabeth Hunter.

*** The following is a branch of the same case.

1558. *May* 12. DISHINGTON *against* M. HAMILTON.

No. 41.
The Lords refused to deliver a pupil in custody to the tutor-testamentar, because he had intented a process of bastardy against the pupil.

Anent the action pursued by Thomas Dishington, tutor testamentar of ——— ——— for deliverance of the heirs of ——— to the said Thomas as tutor foresaid. It was desired by the said M. that the said Thomas should produce his title where he was tutor. The said Thomas produced an instrument, that he was made tutor by him, whom—to the bairns succeeded as heirs. It was alleged by the said M. 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 allegeance of the said M. was repelled by the Lords, and the said title found good enough by the said instrument allenarly.

And also it was alleged in the said action for the part of the said M. That howbeit the said Thomas was made, when he was made, tutor, as said is, yet he may nowise be tutor of the law, because he was not of fit 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 dutiful administration of the said office; which allegeance of the said Thomas was found rele-

No. 41. vant by the Lords, and that he might use the said office of tutory notwithstanding the allegeance made on the contrary.

And also it was alleged by the said Ma. that notwithstanding the tutory foresaid, yet ——— the bairn and heir foresaid should be delivered in the hands of the said Thomas as tutor foresaid, when the heir foresaid 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 the which sentence the said Thomas appealed, and so the matter depended as yet; and also the said Thomas pursues and alleges, that the haill heritage pertains to him by reason of tailzie, and by that manner would denude the said pupil of her haill heritage, and has moved divers other pleas to the hurt and wreck of the said pupil; which allegeance was admitted by the Lords, and decerned, that the pupil heir foresaid should not be delivered to the said Thomas for the causes and suspicion fonnded.

Maitland MS. p. 126.

1560. *March* 22. CREICHTOUN *against* CREICHTOUN.

No. 42.

Sa lang as the minor is on life, and seisit in the landis pertening to him, he being absent and furth of the realme, his curatour may intromet with and uptak the maills and dewteis of his landis.

Balfour, p. 124.

1561. *December* 2.

JAMES KINCAID *against* JOHNE JOHNSTONE of Cotefield, Tutor to JAMES KINCAID of Brochtoun.

No. 43.

The time of tutorie being endit and expyrit, the pupill, male or female, is at his awin fre will and libertie to passe quhair he pleisis; and gif the tutor thairefter haldis and detenis him, his narrest kinnismen hes just richt and title to cause him be put to libertie.

Balfour, p. 121.

1563. *April* 2. ROBERT GRAHAME *against* The LAIRD of DRYLAW.

No. 44.

Ane minor persewand ony action, not havand curatouris, may desire in judgment, and at the Bar, curatouris to be gevin to him *ad lites*, and thair namis to be insert with him for thair interes in the summoundis, and proces, albeit the samin summoundis be not intentit in thair namis for thair interes.

Balfour, p. 122.