

No. 48.

1565. *June 1.* The LAIRD of FINDLATER *against* The LADY FINDLATER.

Gif the tutor testamentar be not of perfyte age, in the meane time the tutor of law sall have place, and be tutor, untill the perfyte age of the tutor testamentar ; and thairefter the tutor of law sould cease and give place to the tutor testamentar.

*Balfour, p. 117.*

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1565. *December 1.* DOUGLAS *against* FOREMAN.

No. 49.  
Found that, in the case of alienation of immoveables made by a pupil with consent of his tutors, *sine decreto*, absolute nullity could not be libelled, but only restitution upon minority and lesion.

In the action pursued by John Douglas and his colleagues, as assignees and procurators *in rem suam* to John Foreman, for reduction of an alienation of a tenement of land lying in the Canongate made by the said John, made with consent of his curatours to his father's brother called George Foreman, it was alleged by the said pursuers, that the said alienation was null in itself, and should be declared so, and all that followed thereupon ; because the said alienation was made by the said John, being a pupil of the age of 14 years without the authority of a Judge interponed thereto, and no command against the said John pupil, and so of the law was null, and ought to be decerned, and bide no reduction nor restitution in integrum et modum perpetui ædicti restitutionis in integrum, as in the title *De Prediis*. It was alleged by the said defender, that the pursuers had no power to pursue the nullity, because they should have libelled *restitutionem in integrum*, and enorm lesion and hurt, and not allenarly nullity as is libelled in this action ; for it may stand the said alienation was made in evident utility of the pupil, and so of all equity ought to stand, quod nemo debet locupletari alieana jactura, and if it was in his hurt *cognitione habita* it should be reduced ; and so the Lords found that it had need of reduction, and that no such alienation should be decerned null of the law ; which allegiance of the said defender was admitted, and the said defender assoilzied from the petition of the said pursuer for the cause foresaid as it was libelled.

*Maitland MS. p. 161.*

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1566. *February.*The QUENIS ADVOCATE *against* The LAIRD of COLDENKNOWIS.

No. 50.

Intimatioun of ony richt or title quhilk aucht and sould be maid to a pupill and minor, is sufficient and lauchfull, gif the samin be maid to his father as lauchfull administrator, or to his tutoris and curatouris.

*Balfour, p. 120.*