

PACTUM PRIVATUM.

1586. July.

L. KERBECHILL *against* LADY KERBECHILL.

No 1.

KERBECHILL, brother to Kerbechill, being lately deceased, pursued for exhibition and deliverance of the pupil, his brother's son. Compeared the mother, and *alleged*, She was tutrix testamentaria, and ought to have the bairn in her custody. It was *answered*, inierat secundas nuptias. She *answered*, That, in her constitution of tutrix testamentar, it was expressly provided, that, albeit she should happen to marry again, et sic provisio hominis abstulit provisionem legis. It was *answered*, That, upon the contrary, the provision of the law, that was founded and made for the weil and preservation of pupils and their gear, might not be taken away by any special provision of man, as appeared by the express law, and Doctors who write thereupon; Cod. Quando mulier tutelæ officio fungi potest; L. 2. et L. ult. ibid. Found by the LORDS, that, notwithstanding of the said provision, the common law ought to be followed forth, and that her tutory testamentary (fell) per secundas nuptias.

Fol. Dic. v. 2. p. 24. Colvil, MS. p. 408.

1636. March 8.

STUART *against* HENDERSON.

ONE William Stuart being served and retoured tutor lawful to the bairns of his umquhile brother, Mr Walter Stuart, notary in Perth, pursues Agnes Henderson, relict of his deceased brother, and _____, Stuart, now her husband, for exhibition of certain bonds, made to the bairns father, and being in her hands, as tutrix testamentar nominated in her umquhile husband's testament; and she compearing, and *alleging*, That the pursuer's retour to this office of tutory is null, seeing it was deduced before the Bailies of the Canon-

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No 2.
Found in conformity with the above.