

minor was Major, whereby the curator might have a valid discharge thereon, which he could not lawfully now give, and would not supply it by caution: And because the minor desired, that he might have up the evidents of such of his lands as he held by other holding than ward, whereby he might obtain himself entered and infest in the same, and so eschew the danger of nonentry; the Lords found (albeit the curator and his cautioner were liable for these dangers to the minor) yet to eschew such prejudice to the minor, and that he might not be put to such action, that he might borrow, and take upon trust from the Clerk any of his writs whereof he had use, and which he would desire for that effect, upon good security to the clerk, to re-deliver the same to him again, at the day unto the which they should be borrowed. This was done to eschew the minor's prejudice; but in legal manner they found by process, that the minor could not crave them, the curator not being removed, nor pursued as suspect; for the minor had diverted from his curator foresaid, and was married without the curators' advice, whereby they agreed not in their business.

Act. *Nicolson & Mowat.*

Alt. *Stuart & Burnet, minor.*

*Durie, p. 508.*

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1630. July 21. VALANCES against DR. FORRESTER.

No. 115.

A man having left his wife tutrix to his children with others of his friends; if she only have intromission during her widowhood, and continue the same after she is married to another husband, although she lose her tutory by her marriage, yet she will be liable to the children for payment of the annualrent of the sum and duties uplifted by her, as well as if she had continued to be tutrix. This was found between Valances and Robert Fleming their tutor, against Dr. Forrester, who married their mother,

*Spottiswood, p. 347.*

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1631. February 22. JOHN FINNIE against PATRICK OLIPHANT.

No. 116.

John Finnie, pupil, pursued his mother, and Patrick Oliphant, her husband, for a modification whereby he should be entertained, in respect she had her life-rent of all his estate. The mother offered to take her son and entertain him freely herself. The Lords preferred the boy's tutor to his keeping, to whom the mother was ordained to give a modification for the pupil's entertainment, though he was not a tutor testamentar, but only dative.

*Spottiswood, p. 347.*