

1626. July 21. P. GOLDMAN *against* GRIEVE.

No 84.

ONE being obliged to pay a legacy to a wench when she was of perfect age, the LORDS sustained action for the same at her instance, being of fifteen or sixteen years of age, althought it was alleged that she could not be counted of perfect years, unless she were one-and-twenty years old, or married to a husband.

Spottiswood, (MINORS and PUPILS.) p. 213.

1628. July 1. HENDERSON *against* KNOCKHILL.

No 85.

A PUPIL being pursued for reduction and improbation of his rights, and having no tutor, gives in a supplication to the Lords to continue the process for a certain space, till his friends may judicate and authorise him with a tutor or curator *ad lites*; which the LORDS granted to a certain day with certification if his friends did not authorise him then, the LORDS would grant proof to his party without longer delay.

Auchinleck, MS. p. 133.

* * * Durie reports this case :

IN the improbation of Mr James Henderson, whereof mention is made June 28. 1628, No 84. p. 2221, *voce* CITATION, the defender, who was a pupil, being convened, and his father as administrator convened with him, and the father dying since the intenting of the cause, whereby the pupil was destitute of one to defend him, and he compearing by his procurators, and desiring that the process might be delayed to a fit and competent day as the Lords should assign, betwixt and which he might choose tutors and curators, *ad hunc litem*, to consider of his rights, and to defend him in this pursuit; which desire the LORDS found reasonable, and therefore superceded all proceeding in this process until the first of November, that betwixt and that day the pupil might provide himself of tutors and curators, to maintain and assist him in the defence of this process; and that at that day, they would proceed and do justice in the process against him without delay, whether he were authorised with tutors or curators or not.

Durie, p. 379.

1631. July 13. A. *against* B.

No 86.

If a minor be pursued as heir to his father, not having tutors or curators, he offers to renounce. The pursuer *alleges*, That renunciation, without consent of

No 86. tutors and curators, cannot be received. The minor alleges he has none. The LORDS ordain the renunciation in such cases to be accepted, and declare, that the minor shall not be hereafter restored to come against his renunciation till the debt be first paid *cum omni causa*.

Fol. Dic. v. I. p. 578. Auchinleck, MS. p. 135.

No 87. 1675. December 10. SCOT against KENNEDY.

A FATHER, or any other person, disposing his means, may qualify his own gift, and in special with that provision, that if the persons be pupils or minors, the same should be administered by the persons named in the said disposition; and yet these, in whose favours the disposition is made, may choose curators, who will have the administration of any other estate belonging to them; but if they be *puberes*, their persons are free, and neither of the said administrators can pretend to the keeping of them, *quia curator datur rebus*.—See TUTOR and PUPIL.

Dirleton, No 316. p. 155.

. Stair reports this case :

UMQUHILE ——— Wallace granted assignation of several bonds to his two bairns, and appointed Robert Kennedy overseer to them to manage these sums during their minority, and in case of the miscarriage or debauchery of either of them, to apply their share, or a part thereof, to the other. The boy being set by Robert Kennedy to one Reid goldsmith, was seduced and withdrawn by one Purves, whom he chose curator, and became apprentice to one Scot goldsmith, who is also chosen curator. Kennedy *alleged*, That the father had committed the administration of the sums assigned to him during the children's minority, and made him overseer, which in effect was tutor; and therefore having set the boy to a master during his pupillarity, he ought to be restored to him and to be put to his former master; and, albeit parents cannot appoint curators, yet where they do expressly assign their means with that provision, it is valid as a condition of the assignation.

THE LORDS found that the management of the sums assigned belonged to Kennedy by virtue of the assignation, not as curator but as administrator; and found the minor might choose other curators, but that they could not meddle with the sums assigned; and found, that after pupillarity the minor's person was free, but as to what master he should serve, ordained both indentures to be produced, and both the masters to be heard.

Stair, v. 2. p. 380.