

1636. *March 8.* STEWART *against* HENDERSON.

No. 132.

A brieve of tutory being directed out of the Chancery to any Judge in general, may be served like a general brieve of mortancestry before any Judge, though neither tutor nor pupil are within his jurisdiction.

Durie.

* * * This case is No. 2. p. 9585. *voce* PACTUM PRIVATUM.

1636. *March 17.* WEIR *against* ARNOT.

No. 133.

An assignee constituted by a tutor to a bond payable to himself and successors or assignees, but mentioning the money lent upon the bond to have been his pupil's money, has right to pursue for, and discharge such a bond, without concurrence of the pupil, but ought to give security to indemnify the debtor at the pupil's hands.

Durie.

* * * This case is No. 307. p. 11629. *voce* PRESUMPTION.

1642. *February.* SCOTSTARVET, &c. *against* The EARL of BUCCLEUGH.

No. 134.

The Lords refused to grant to a tutor a modification for his pains, over and above expenses.

Harden, Clerkingtone, and Scotstarvet, curators to the Earl, pursue him to see and hear them liberated of the office of curatory, because the Earl promised to take and follow their advice in his business, but does not seek their advice, and follows it not, but is guided by other curators and persons not so acquainted with his estate. Answered, No ground in law for liberating them of their office. Replied, The minor has, without their consent, done sundry deeds, with consent of other curators, to his great lesion; and given in a condescence on the deeds. Answered, The act of curatory chooses the hail or any two of the curators by whose consent he may do any thing, and the not consenters are not bound for deeds to be done without their consent. The Lords find accordingly. The pursuers urge another alternative of the conclusion of their summons, viz. that, conform to the provision in the act of curatory, they be not liable but for such deeds as they consent to, and that otherwise they may be free of omission and commission. The Lords interpone their authority to the quality of the act, and grant the conclusion. The pursuers urged the first alternative to be liberated of the office of curatory. The defender, in respect of the curators' desire to be liberated, sought by the summons, and their unwillingness to exercise the charge,

is content they be liberated; and craves liberty to name others in their place. No. 134.
 The Lords interpone their authority to the agreement, and liberate them, and give the minor liberty to choose others; who, on the morrow, chose the Marquis of Argyle, the Earl of Lothian, and the Sheriff of Tiviotdale. The pursuers urged another conclusion of their summons, to have their tutory counts taken off their hands. Answered, By the act of curatory, two of the curators were chosen, viz. Sir John Murray and Sir James Scott, to hear the tutory accounts, allow and disallow, and grant discharges, which they have done, and produce the discharge. The Lords interpone their authority to the discharge. Scotstarvet urged, He might, by and attour the articles allowed in the tutory accounts and discharge; have modification of the Lords for his pains. Answered, A tutory is an office of honour and trust, and there can be no modification due to the tutor for his pains. Clerkingtoun urges taking the charter-chest and evidents of his lands. Answered, Content to take them on inventory and oath that he has nor had not more.

Nicolson MS. No. 561. p. 387.

1662. *January 14.* STROWAN MURRAY *against* HIS TUTOR.

No. 135.

In a count and reckoning pursued by Murray of Strowan against Mr. John Murray, his tutor, it was alleged; That the tutor could not be charged with greater prices of farm victual than the Candlemas fiars yearly. It was answered, That the tutor consumed most part of the farms in his own house; and that the most of the gentlemen in that country are in use to keep up their victual till summer and Lambmas, and get far greater prices than the fiars; and the fiars are ordinarily less than what is got for victual in these bounds. It was replied, That for what he spent in his house he was content to count for, at such prices as other gentlemen received; but the tutor, to satisfy the pupil's annual-rent, was oft-times forced to sell the victual before it came off the ground, or at Candlemas, for ready money.

The Lords ordained the prices to be proved as the gentlemen thereabout got for their victual; reserving the modification, after consideration of the fiars, with the prices proved.

Gilmour, No. 18. p. 15.

1662. *January 25.* EARL OF WINTON *against* RAMSAY.

No. 136.

A tutor who had acquired right to a debt due by his pupil was ordained to find caution to refund.

Gilmour. Stair.

This case is No. 201. p. 11523. *voce* PRESUMPTION.