

1664. *December 15.* ROBERT and BESSIE SWINTOUN *against* JAMES NOTMAN.

IN an action of pro-tutory betwixt Robert and Bessie Swintoun against James Notman, as representing umquhile James Notman, who was appointed overseer to the pursuers, by their father's latter will; Margaret Currier, their mother, being nominated tutrix; and which James Notman had intromitted with the pupils' means, the tutrix being married, and so the tutory expired;—the Lords, upon many hearings of this case, in their own presence, found, That the pro-tutor was liable to count for the pupils, *eodem modo* as if he had been tutor; and made an Act of Sederunt, which is of the date the day of
1665, that they would, in all time coming, decide in such cases accordingly, conform to the civil law and a practique of 5th July 1637, in Dury,—M'Duff against M'Duff.

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1664. *December 16.* GEORGE BROWN *against* JAMES KIRK.

GEORGE Brown being bound, by his ticket, to pay to James Kirk the sum of £18 Sterling, and, in case of failure at the day, £50 Sterling; upon which ticket and failyie he recovers decret before the bailies of Edinburgh against the said George Brown for null defence and not-compearance;—there is suspension and reduction raised of the decret, upon this reason,—That the same was for null defence; and that, if he had compeared, he would have alleged, that the ticket was null *quoad* the £50 sterling of failyie, the same having been extorted from him *metu carceris*; and that he was instantly content to pay the £18 sterling and expenses, according to the Lords' modification. The Lords, in respect of the decret recovered before the bailies, and of the suspender's own deed, by granting the foresaid ticket, albeit done for eschewing warding,—would not take away the decret and bond.

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1664. *December 17.* JOHN ANDERSON, Parson of Dysart, *against* JOHN WATSON.

MR John Anderson, parson of Dysart, pursues removing from four acres of land designed to him for his glebe, against John Watson, the heritor. The Lords sustained process, and decerned: notwithstanding it was alleged for the defender, That only ministers of landwart kirks, and not ministers of burghs-royal, could have glebes, conform to the Act of Parliament; which the Lords repelled, in respect the Act of Parliament is only meaned of such burghs as had no landwart at all in the parish.

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