

1666. January 4.

DAVID and ANDREW FAIRFOULS against MR. JAMES BINNIE.

The bairns of the umquhile Bishop of Glasgow having charged Mr. James Binnie to pay 1000 merks, he suspends, and alleges that they were minors, not sufficiently authorized; in so far as they did choose Mr. John Harper, and Auchmoutie, and their mother, to be their curators, or any two of them, their mother always being one, so that their mother being dead, who was *sine qua non*, there behoved to be a new election. It was answered, That the pupils were willing to compear, and acknowledge these curators as their curators, which is sufficient to authorize.

Which the Lords found relévant.

Stair, v. 1. p. 332.

No. 153.
In a nomination of curators, the pupil's mother being *sine qua non*, on her death, the pupil was found sufficiently authorised by two surviving curators.

1666. February 6.

LAIRD of DURY against The RELICT and DAUGHTER of umquhile DURY, his Brother.

Dury being served tutor of law to his brother's only daughter, pursues her mother for delivery of her to be educated by her tutors. It was alleged, That he was to succeed to her, and so could not have the custody of her person; *2do*, That she was but nine years old, and her mother unmarried, and so she was the fittest person to educate her; especially seeing she was the only living child of many, and so not likely to be lively. It was answered, That the tutor insisted not for the custody of his pupil himself, but condescended on several persons with whom she might be educated; and alleged, that she having £.40,000 of provision out of the family, there was no reason she should be kept by her mother, and disposed of at the pleasure of her mother's friends.

The Lords decerned the child to be delivered to Mr. Alexander Gibson, one of the Clerks, to be educated with him; but superseded execution of the sentence till Whitsunday come a year, that she might be delivered to her father's friends before she was eleven years old, and could have any thoughts of marriage.

Stair, v. 1. p. 348.

No. 154.
A pupil was found to be in the keeping of her mother, who was a widow, till she was 11 years old, and then of a friend of her father's side, but not of the tutor, who was nearest to succeed.

1666. June. 30.

STEVIN against BOYD.

Stevin pursues his mother, as tutrix, and John Boyd, as husband and factor, for an account of his father's means; in which account these points were reported; *first*, There were some old unfashionable ware in the defunct's inventory, not sold, whereof the tutrix offered to the pursuer his two third parts *in specie*. The pursuer answered,

No. 155.
To what length in diligence is a tutor bound to proceed?

No. 155. That the tutrix had priced the same, and behoved to accept them at that price; and that she ought to have done diligence to have sold them; and executors are never liberated but upon payment of the price.

The Lords found, That albeit executors are countable to creditors always for the price, yet not so to the children; and therefore if it was visible that the ware was old, and could not be sold, wherein the tutrix was at the loss of her third, they found the same should be accepted; but, in that case, they found the tutrix liable for any greater price she got than that contained in the testament. The *second* point was, What diligence the tutrix should be liable for, whether registered horning were sufficient, or if pointing and appricing behoved to be used?

The Lords found, That horning would not be sufficient in all cases, but according to the condition of the debtors; and therefore ordained the parties to condescend thereon.

Stair, v. 1. p. 385.

* * See the sequel of this case, No. 35. p. 500. *voce* ANNUAL-RENT.

No. 156. 1666. *November 9.* L. TOUCH *against* SEATON.

Found, That a tutor or curator pursuing *ante redditas rationes*, as assignee to a debt due by the minor, was presumed to have acquired the same *nummis pupilli*, for the pupil's use.

Harcarse, No. 11. p. 295.

No. 157. 1666. *December 7.* M^cKENZIE *against* FAIRHOLM.

A father, as administrator in law, cannot be *auctor in rem suam*.

Stair. Dirleton.

* * This case is No. 72. p. 8959. *voce* MINOR.

No. 158. 1667. *July 8.* M^cBRAE *against* M^cLAINÉ.

In this process, being for removing a tutor suspected, upon many grounds, and in special, that the tutor's father had been tutor to the pupil's father, and had not counted, and that the tutor and his near relations had questions and actions of great importance with and against the pupil,

The Lords inclined, That another friend should be joined to the tutor; but no answer was given by the Lords to the dispute; only the pursuer's procurators got a time to condescend upon a person fit to be joined.

Dirleton, No. 90. p. 37.