

signed a day for proving thereof. Likeas, the Lords found a bond granted by Crawfordston to this defender, of L.21,000, in all probability was only made in warrandice, and to secure the foresaid disposition made by the said Crawfordston to the defender; and therefore restricted it that it should not affect neither the defunct's heirship nor executry, no not any lands save those contained in the said disposition, for the making of which effectual it was presumed to be granted allenary.

*Advocates' MS. No. 10, folio 71.*

1670. *April.*

BURNET *against* BURNET.

THE tutor of Leyes pursuing the mother to the pupil, at the secret council, for exhibition and delivery of the person of the pupil to him as tutor of law, and so having the sole and undoubted right to keep and educate the pupil. (*Vide Parl. 1661, act 8th, against Papists and Jesuits, in fine. Vide act 9, Parl. 1567 :*)

EXCEPTED,—The pupil cannot be delivered up to this supplicant, because he being a quaker, the child's education is not to be committed to him, in regard of the hazard there is therein of the pupil's perversion by his tutor's poisoned principles; and alleged the law of the kingdom in the case of Popish parents, appointing their children to be taken from them, and to be educated in godly company; now if children may be taken from parents, because of their religion, *multo magis* may they be taken from tutors, where the obligation is more remote, and the lines of the law of nature more dim.

REPLIED,—His being of a different religion can noways make him tine, or deprive him of that uncontroverted right and privilege due to him, as the nearest agnate, by the law of God, of nature, nations, and the inviolable practice of this kingdom: for if that were, how comes it that popish noblemen retain, even since the reformation, their privileges of sitting and voicing in Parliament, if they take the oaths of allegiance and supremacy; of presenting to churches whereof they are patrons, &c.; albeit, there may arise very great detriment and prejudice to both kirk and state by that latitude or such concessions; and yet it is sustained, because it being their natural right, there could not be law found whereby to deprive them thereof. As for the act of Parliament, it is of the nature of all others *viz. strictissimi juris*, and not to be extended *de casu in casum*. Yet to obviate the apparent hazard, he was content the pupil should be boarded at schools, in any place the mother and his other friends should agree upon; and so that he might be in the custody of neither of them.

*Vide Fabrum in codice, lib. 1mo, tit. 5to, De Legibus et Constitut. Principum.*

*Advocates' MS. No. 11, folio 72.*