1628. *March* 8. MUIR and THOMSON *against* KINCAID.

No. 85.

THREE tutors being nominated conjunctly, in a pursuit at the instance of one against the other two, to accept or renounce, one of them compearing, and renouncing, and the other alleging, that the pupil was not sufficiently authorised in this process, the allegeance was repelled, and process sustained.

Fol. Dic. v. 2. *p.* 383. *Durie.*

*** This case is No. 8. p. 1349. *voce* BASTARD.

1634. *February* 22. DAVIDSON *against* JACK.

No. 86.

A DISCHARGE granted by three or more tutors jointly, makes each of them liable *in solidum* to account for the money.

Fol. Dic. v. 2. *p.* 383. *Durie.*

*** This case is No. 45. p. 506. *voce* ANNUAL-RENT. The like, with regard to curators, 11th February, 1630, Guthrie against Guthrie, No. 17. p. 14640.

1671. *January* 17.
DRUMMOND of RICKARTON *against* FEUERS of BOTHKENNEL.

No. 87.
A tutory granted to two persons jointly, was found void by the death of either.

THOMAS DRUMMOND of Rickarton pursues a poinding of the ground against the tenants of the lands of Bothkennel; wherein the feuers alleged, No process, because the pursuer, being pupil, he is not sufficiently authorized, the tutory produced being to his mother and uncle jointly, and his mother being dead, his uncle is no more tutor, the tutory being granted to them, and bearing expressly to them jointly. It was answered, That, in tutories, curatories, executories, the death of one person doth not evacuate the office, but it accresces to the rest.

The Lords found, That, in respect of the tutory bearing to two *conjunctim*, the death of one evacuates the office; nevertheless, they declared that they would give a curator *ad hanc litem*, to authorize the pupil, but that none could uplift or discharge, till there were a new gift of tutory.

Fol. Dic. v. 2. *p.* 384. *Stair, v* 1. *p.* 704.

*** Gosford reports this case:

IN a pursuit at Rickarton's instance against the feuers, for payment of an annual-rent, wherein he was infeft, and at her mother's instance, for her interest,

as being tutrix-dative, it was alleged, That the mother could not authorize him, because, by the gift of tutory, his said mother and John Drummond are made tutors jointly, and the said John being dead, the tutory was void. It was replied, That, by the death of John, the whole office did accresce to the mother, as in tutories and acts of curatory, where some are appointed *sine quibus non* by the death of any of them, the full power and office do accresce to the surviving tutors or curators. The Lords did sustain the defence, notwithstanding of the reply; and found a difference betwixt this gift and a clause appointing tutors *sine quibus non;* because, in that case, the tutory or act of curatory are not void by the decease of one of these appointed to be *sine quo non*, whereas this gift, being granted as said is, is *ipso jure* null, and there is no necessity of a new gift; yet, lest the minor should sustain prejudice by this delay, they did authorize his advocate to be tutor *ad hanc litem.* No. 87.

Gosford MS. No. 316. *p.* 140.

1672. *January* 25. RAMSAY *against* MAXWELL.

No. 88.

AN act of curatory, bearing a nomination of curators, three of whom to be a *quorum*, it was found, There could be no curators, unless three had accepted.

Fol. Dic. v. 2. *p.* 384.

*** This case is No. 178. p. 9042. *voce* MINOR.

1672. *February* 14. ELLEIS *against* SCOT.

No. 89.
Tutors being nominated, without mention of conjunctly and severally, or of a *quorum*, those who accepted were found authorized to act.

MR. JOHN ELLEIS having charged Mr. George Scot for a bond granted to him, he suspended, and alleged, That Mr. John was his tutor, and it behoved to be presumed *intus habuit.* The Lords superseded to give answer till the tutor's accounts were closed; in which it was alleged, That there being five tutors nominated, without mentioning conjunctly and severally, that two only having acted, they could not be liable as tutors, because the nomination being of five, it must be understood to be those jointly, not being otherwise expressed; so that those who acted, having no sufficient active title by which they could have pursued as tutors, they can only be liable as intromitters, in so far as they actually intromitted, and not *pro omissis.*

The Lords repelled the defence, and found the accepting tutors liable for omission and intromission.

Fol. Dic. v. 2. *p.* 384. *Stair, v.* 2. *p.* 69.

*** Gosford reports this case:

IN a count and reckoning at Mr. George Scot's instance against Mr. John Elleis, as tutor, he having charged Mr. John with several articles of omission, seeing he