

No. 172. Replied, A tack set by a tutor could endure no longer than the tutory; which reply the Lords sustained, though the advocate and others thought it hard.

Harcarse, No. 16. p. 296.

1672. *January 3.*

A. against B.

No. 173.

A curator having pursued the other four to find caution to save him free and skaitless at the pupil's hands, in respect they managed all things at their pleasure to the pupil's prejudice; and likewise the cautioner for the tutors was dead, without any to represent him;

The Lords sustained process only for renewing the caution, in case the other was insufficient.

Harcarse, No. 17. p. 296.

1672. *February 20.*

CARSTAIRS against MONCRIEF.

No. 174.

The curator's consent is effectual where the deed is not directly in his favour, though he have a consequential benefit thereby.

Stair.

* * This case is No. 73. p. 8962. *voce* MINOR.

1672. *June 27.*

MR. JAMES STIRLING against The REMAINING TUTORS of JEAN GOVAN.

No. 175.

A tutor craved that the co-tutors should find caution to keep him skaitless from their administration. This found incompetent, as the remedy was to remove them when they transgressed.

Mr. James Stirling being uncle on the mother's side to Jean Govan, and three or four other persons related to her on the father's side, were appointed tutors dative to her; and now Mr. James alleging that the tutors on the father's side did act without him, and did not acquaint him with their meetings, and did out-vote him in the pupil's affairs to her detriment, albeit, by the law all tutors being liable *in solidum*, he would be liable for their mal-administration; and therefore craved, that the remaining tutors should find him caution to keep him harmless for their acting, or otherwise they would suffer him alone to act, and he should find caution to keep them harmless; as also, that they might renew caution, seeing their cautioner was dead, and none to represent him.

The Lords found the libel not relevant, there being a competent remeid in law to the pursuer for removing the defenders as suspected tutors, if they did malverse, but they sustained only the pursuit for renewing of caution.

Stair, v. 2. p. 91.

Gosford reports this case :

No. 175.

The pursuers and defenders being five in number, and all of them being tutors dative, whereof four of them were nearest of kin on the fathers' side, and the pursuer related only by the mother, he did thereupon intent action : That seeing one of the cautioners of those on the father's side was dead, and had none to represent him, and that the said tutors on the father's side, without calling the pursuer, did either administrate, or when they did call him, did combine and outvote him ; that either they should of new find sufficient caution to warrant the pursuer from all hazards, or else that he should have the sole administration upon sufficient caution to warrant them from all dangers. It was alleged for the defenders, that they being all conjunct tutors with the pursuer, and having found caution, they could not be removed from their office unless they could libel against them as suspect tutors by reason of malversation.

The Lords did sustain the defence, and found, that the ground of this pursuit was a mere novelty, and that the law allowed no remedy to put a tutor out of his office but as being suspected upon malversation ; yet they ordained, that new caution should be found in the place of him that was cautioner for the tutor who was dead.

Gosford MS. p. 263.

1673. *January.*

— against KIRKDELLS.

No. 176.

It was debated but not determined, if a minor or idiot, having had a tutor dative, if upon the tutor's death, there could be a tutor of law served, or only another tutor dative ; and thereafter my Lord Nevoy got a tutory dative, but the interlocutor was delayed.

Harcarse, p. 296.

* * Harcarse mentions Castlehill's Practicks as his authority for this case, and for Nos. 169, 171, 172, and 173.

1673. *July 9.*

ALEXANDER, THOMAS, and WILLIAM FORBESSES, and their CURATORS,
against FORBES.

No. 177.

In a pursuit at the instance of the said brothers, against John Forbes of Balfing, as executor to Forbes of Lesly, for payment of 1000 merks left in legacy by Forbes of Lesly, it was alleged that he had *bona fide* made payment to the pursuer's father, who was their administrator in law. It was replied, That that pay-

A father being denounced rebel and fugitate for murder, pay-