

No. 185. minors may chuse curators, who will have the administration of any other estate belonging to them.

Dirleton. Stair.

* * This case is No. 87. p. 8970. *voce* MINOR.

1676. *December 13.* MELVILLE *against* MONTGOMERY.

No. 186. A tutor, who had intromitted with the estate of his pupil, a Lady, was found not entitled to sue her husband, after the dissolution of the marriage, upon an assignation to a debt which had been due by her, as the tutor had not settled his accounts.

Gosford.

* * This case is No. 164. p. 9845. *voce* PASSIVE TITLE.

1677. *January 13.* FERGUSONS *against* FERGUSON.

No. 187.
Duty of a
tutor to do
diligence.

Helen and Elizabeth Ferguson, the only children of ——— Ferguson of Threave, and Janet Ferguson his spouse, pursue Simon Ferguson their tutor, and insist on this point, that by their father's contract of marriage produced, the lands of Threave are provided to the heirs of the marriage, and so did belong to them; and albeit their tutor raised briefes, and served the same *affirmative*, yet he did not extract the service nor retour, but did collude with Thomas Ferguson, brother to the defunct, who disponed the estate to the tutor's brother, and was served heir-male, the lands having been formerly provided to heirs-male, which might have been prevented, if the tutor had retoured the daughters' service, who are provided heirs by the contract of marriage, and thereby the tailzie is broken, and were accordingly served by an inquest. Several witnesses being adduced to prove this point, and among the rest the tutor's brother, who deponed, that the tutor and he being uncles to the pursuers, and having taken advice of lawyers, they found that the pursuer's father was infest as heir-male to his father, and that by his infestment the lands belonged to heirs-male, and that there being no new infestment upon the contract of marriage, changing the succession from heirs-male to the heirs of the marriage, that the contract being only personal, could not instruct a valid service of the daughters as heirs of the marriage; but found only a personal action against the heir-male, to fulfil the contract, and to enter and denude himself in favours of the heirs of the marriage, and that the heir-male being an insolvent vagrant person, if he had disponed, his singular successor being infest *ex causa onerosa*, would be secure, and the pursuers get nothing; for preventing