

1682. *February.* Gairns *against* Mr. WILLIAM CLARK.

No. 205.

The curator of Reven of Gairns having gone off the kingdom, and left his pupil in family with Mr. William Clark, whom Mr. William, by several missive letters to his friends, called his pupil; and Mr. William, who had the custody of Gairns' papers, having transacted with his creditors, and got abatements, and having taken rights in his own name; Gairns pursued a declarator, that these eases should belong to him, Mr. William being in the case of a pro-curator.

The Lords found, that Gairns having a curator, could not properly have a pro-curator; but found Mr. William liable as *negotiorum gestor*, or factor, and that he could not have the benefit of the eases, which ought to be forthcoming to the pursuer, deducting his expenses; and Mr. William did not reclaim, but rather consent to this.

*Harcarse, No. 973. p. 276.*

1683. *March.* GRIERSON of Lag *against* CARRUTHERS of Hole mains.

No. 206.

A minor having, after his majority, intended a reduction and declarator, that an apprising acquired by the curator was satisfied by intromission with the pursuer's estate;

Answered for a third party, who had got an assignation to the apprising during the curatory; that the apprising was in the person of the curator before he was curator, and so not being acquired *nummis pupilli*, he might dispone to singular successors for onerous causes.

Replied: The comprising was compensable, in so far as the curator had intromitted with the minor's money before assignation and intimation to the defenders, infetment not having followed on the comprising.

The Lords, before answer, ordained account and reckoning.

*Harcarse, No. 975. p. 276.*

1683. *November.*

THOMAS WILSON and His WIFE *against* The REPRESENTATIVES of RATHO.

No. 207.

The Representatives of Ratho, who had been tutor and curator to one Spence, craved a yearly allowance for incident charges, which they could not condescend upon but in the general, that there behoved to be charges, the defunct having been at great pains and care about the pursuer's estate, and improved it to double the value well secured.

The Lords did not give him allowance *hoc nomine*, viz. for pains and incident charges, which was not condescended on; but they modified the aliment during

the years that the pursuer was entertained in the curator's family so high, as that he got allowance of 100 merks yearly upon that consideration. No. 207.

*Harcarse, No. 976. p. 276.*

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1683. *February.* **TOLQUHOUN** *against* **SIR DAVID THORIS.**

No. 208.

Found that one having acted as pro-tutor, by taking the pupil into his family, managing his affairs, and intending a process before the council, for recovering the pupil back to his family, from some persons that had seduced him away, he, the pro-tutor, could make no advantage by a gift of the pupil's ward and marriage he had got, but was obliged to denude thereof upon re-payment of the sums he paid for it. In this process the import of curators authorising their minor, not jointly by signing together *unico contextu*, but separately, was debated, but received no interlocutor.—See No. 216. p. 16308.

*Harcarse, No. 977. p. 276.*

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1684. *January.* **VISCOUNT OF OXFORD** *against* **HIS CURATORS.**

No. 209.

Found, that when a pupil's tenants are not able to pay the by-gone rents before the tutory, and the current rents, the tutors may forbear to exact what the tenants cannot spare without hazard of laying waste the lands by the tenants being disabled; albeit it was alleged by my Lord Oxford the pupil, that there was no fear of casting the lands waste, for that other tenants, able to pay the rent, would have been got; but here the curators had been so cautious as to procure a precognition by warrant of the Lords, conform to which they had acted when their pupil was abroad.

*Harcarse, No. 978. p. 276.*

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1684. *January.*

**THE TUTOR OF LUDE** *against* **THE LAIRD OF LUDE** *and* **HIS CURATORS.**

No. 210.

In a tutory account, the Lords found, that the tutor might consume the flying customs, viz. hens, capons, and chickens, (not geese) without being liable to his pupil for the value; and likewise they allowed him some stones of butter yearly, in respect he being tutor in law, and living in a different shire from where the pupil's estate lay, had frequent occasion to come there to manage the pupil's affairs.

*Harcarse, No. 979. p. 277.*

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1684. *November 12.* **—————** *against* **CUNNINGHAM.**

No. 211.

The writer of a testament was named therein tutor-testamentary, having, without confirming or protesting against any acceptation of tutory, procured a gift of his