the Sheriff; it was *alleged*, That these deeds did not make him liable as curator, because he did never compear judicially and make faith and find caution, which are necessarily required to make a curator liable, as the act of curatory bears; and, without which, he cannot be authorised by the Judge. It was *replied*, That a curator, acting *qua* curator, by subscribing any deed and consenting to his pupil's deeds, infers an acceptation against him, it being in his power to act or not, notwithstanding his nomination in the act of curatory. THE LORDS, after much reasoning among themselves, finding it a case of universal concernment, did find, by a plurality of votes, that a curator being named, and consenting to several deeds, makes him *passive* liable to the pupil to count for the estate, as well as the rest of the curators who compeared judicially and accepted; albeit it will not furnish him an active title to pursue the rest who have accepted; neither would it be sufficient to authorise the minor to make a disposition, unless he had compeared, made faith, and found caution. No 43.

There being an article wherewith Elies was charged, viz. for the rents of some years after the pupil was major; it was *alleged*, That immediately after the pupil was major, the office of curatory became extinct; and one that was curator, intromitting, can only be liable for his actual intromission, but not for omission as a curator. It was *replied*, That as undoubtedly a tutor, after the expiring of the years of pupilarity, if he continue to administrate, is liable, *tanquam tutor*, as likewise a factor, after expiring of his factory, if he continue to act; so there is *par ratio*, if a curator continue to administrate.

THE LORDS found the allegeance relevant, and that a curator, being *junctus officio*, is only liable for his intromission *tanquam quilibet*; and there was a great difference betwixt him and a tutor, or factor, who continues to intromit, because, after pupilarity, the minor is not *sui juris*, and capable to administrate his affairs; and the granter of a factory being still absent after the expiring thereof, the tutor and factor, in law and reason, ought to be liable for their administration, as when their office did continue. But a minor having attained to his full age, and so capable to administrate his own affairs, and to discharge his curators, and to uplift his own rents by himself or his order, he suffering any other to intromit, they can only be liable for their actual intromission, but not for omisson, which is his own fault.

Gosford, MS. No 393. *p.* 197.

1684. *February* 27. DUFF and DALGARDNO *against* TAYLORS of EDINBUGH.

THE LORDS having heard Harcarse report the points taken to interlocutor in the debate Elizabeth Duff, and her husband, John Dalgardno, my Lord Forret's servant, against the incorporation of Taylors of Edinburgh, they ordain before answer the adjudication upon the estate of Salton to be produced; and find the No 44. Tutors are liable for accounts in the defunct's

No 44.
account book, though not contained in the inventory of the defunct's testament, being contracted within three years of his decease.

defenders, as tutors and curators to the said Elizabeth, liable for the value of the goods and others not bearing annualrent, belonging to the defunct; and that they ought to be stocked and employed for annualrent within a year after the defunct's decease, and that the annualrents of the sums due during the tutory ought to be stocked and employed for annualrent, from the expiry of the tutory; but that they as curators were not obliged to stock the annualrents due during the curatory, in respect their minor was married during the currency of their curatory; find the tutors liable to diligence for all bonds and tickets, whether contained in the inventory of the defunct's testament or not; but find them not liable for accounts not contained in the inventory foresaid, in respect the said inventory was given up by the defunct's own mouth, and John Steuart was ordained to supply the omissions therein; and refused to allow the defenders expenses, in respect they have not made inventory, conform to the last act of Parliament in 1672.

Then Dalgardno having given in a bill against this, the LORDS, on the 11th March, having considered it with the answers, they found the tutors liable for all the accounts in the defunct's count-book, albeit not contained in the inventory of the defunct's testament, being contracted within three years of the defunct's decease; and as to other accounts preceding these three years, before answer ordain the pursuer Dalgardno to condescend what of the debtors therein contained were alive within year and day after the tutors' accepting of the office, so as they might have done diligence, and referred the counts to their oaths.

Fol. Dic. v. 1. *p.* 241. *Fountainhall, v.* 1. *p.* 275.

*** See this case by Harcarse, *voce* PRESUMPTION.

No 45.
A tutor adjudged an estate for a debt due to his pupil. The Lords found he had done sufficient diligence to exoner him, though moveables were condescended on, which he might have affected.

1693. *February* 15. CATHCART *against* BROWN.

SUNDRY points in the count and reckoning between Cathcart of Carleton and Ann Brown his Lady, against Sir Patrick Brown of Colstown, were reported. The Lords finding the practice had varied in relation to cutting off tutors or pro-tutors who made not an inventory from their expenses; some making them only to lose their personal expenses, (though the President thought no tutor, even making an inventory, could claim these,) others thinking the certification of the 2d act of Parl. 1672 of no value, if it did not extend to all, whether to the pupil's utility or not, as obtaining decreets, confirming the testament, adjudging their debtor's lands, &c. therefore they ordained the several decisions in the case of Gray and Cruikshanks, and the Lairds of Niddry, Preston-grange, and Craigleith; *See* APPENDIX; and Burnet, *voce* TUTOR AND PUPIL, to be produced; that the Lords might take an uniform course in time coming. The 2*d* point, was about some accounts of law affairs paid to John Smart; the Lords allowed him to be examined thereon. The 3*d* was, if his adjudging Buttler of Kirkland's