

1685. *March.*BURNET, Brother to CRAIGMYLE, *against* MR. ALEXANDER JOHNSTON, Curator.

No. 214.

Found that a curator, not having made inventory of the pupil's estate, and left doubles conform to the act of Parliament, ought to be removed as suspect; although it was alleged by the curator, that the pupil had but one bond of 10,000 merks for his estate, which was due by his brother, and so known to his relations that there needed no inventory; and found, That though a tutor, by act of Parliament, was not to have expenses he had been at himself for attendance on the minor's affairs and processes, yet he ought to have allowance for what he expended upon the processes, the same being profitable to the pupil, and also for the pupil's aliment and education.

*Harcarse, No. 984. p. 278.*1685. *December.*DURHAM of Omachy *against* GRIZZLE BARCLAY, the Tutor's Relict.

No. 215.

One Durham, tutor or pro-tutor to Omachy, having, as was alleged, taken a right during the tutory to some lands wherein the pupil's father died in possession, and abstracted the minor's rights; the Lords found, that the tutor or pro-tutor could not invert the pupil's possession, and appointed him to be re-possessed, seeing the tutor did not enter *via juris*; and reserved the point to be debated thereafter.

Harcarse, No. 984. p. 278.

* * P. Falconer reports this case :

Durham of Omachy having pursued an action of removing against the Lady Ethie Betton, wherein he libels, that Duncan her husband was his tutor or pro-tutor, and that Durham of Omachy his grand-father, to whom he was apparent heir, died in the possession of the lands of Ethie-Betton, and that the said tutor had destroyed, or given back the pursuer's grand-father's right to the said lands, and had taken a new right in his own name; and lest it should be interpreted to be to the behoof of the pupil, (being acquired by the tutor) the same has been destroyed, and a new right taken in the relict's name; and therefore, the minor ought to be restored to the possession in which the grand-father died, and that the defender ought to be removed;—it was alleged for the defender, that the defunct having no heritable right, but allennarly temporary rights, such as a right to the liferent, and a gift of ward, the tutor might acquire an heritable right after that was elapsed, and continue in the possession by virtue thereof; and therefore cannot be obliged to cede the possession, seeing the pupil had no right, which might be the title of his possession. It was replied, that the tutor being;