

No. 242. ought not to be stopped therein. The Lords found they had been in use to sequestrate minors as well as the Council, and that my Lord Bargany could not claim her custody, being her nearest heir; and that minors have been oft imposed on in their elections, and that it merited the Parliament's consideration, that minors should not have that unbounded liberty to their own prejudice; therefore, they prorogated the diet of her election till November next, and ordained her to be delivered up to James Hamilton of Pencaitland, one of the Clerks of Session, to stay in his house till the 11th of November next, and all her friends indifferently to have access to her, and that she chuse betwixt the 1st and 10th of the said month.

Fountainhall, v. 2. p. 154.

1704. November 7.

WILLIAM DRUMMOND *against* COLONEL MENZIES'S HEIR.

No. 243.
May a pupil
be sued for a
debt?

William Drummond, writer in Edinburgh, pursued Colonel Menzies's heir for payment of 500 merks, contained in his predecessor's bond, on this passive title, That he had accepted a disposition with the burden of debts, and so *præceptione hæreditatis* was liable. Answered, I am only a pupil of seven or eight years old, and so can neither accept, repudiate, nor possess, law presuming that age to have no will or deliberate knowledge in such things, and therefore cannot be universally liable, unless he prove the minor to be *locupletior factus* by it. Replied, It is confessed, by a late act of Parliament, pupils are exeemed from personal execution by caption, till their age of fourteen; but to exeem their estates till then, is contrary to the analogy of all law; for if he be lesed by his tutors accepting a right, he can be reponed against their deed; but it were absurd to postpone creditors' diligence on that pretence, for if it be *hæreditas damnosa*, they may renounce and repudiate; and if they do not, they must be liable. The Lords considered, that pupils had two remedies; one by the *actia tutelæ* against their tutors; and the other by restitution against deeds done to their lesion; and that they could not burden the pursuer to prove the pupil was *lucratus*, but the tutors ought to repudiate, if they would free the pupil of this pursuit; and seing they did not, they repelled the defence, and found the minor liable for the debt.

Fountainhall, v. 2. p. 238.

1705. February 16. BALFOURS *against* FORRESTERS.

No. 244.
What is sufficient cause
to remove
tutors as suspect?

William Forrester, writer to the signet, having a considerable estate in money, near 100,000 merks, he, by his testament in 1705, names Mr. James Forrester, advocate, his brother, and others of his own friends, to be tutors to his children, but with the privileges of the 8th act of Parliament 1696; and these tutors having accepted, and managed by the space of two years and an half, there is a process