

No. 250.

ren in the event of her falling under the curatory and government of another husband, was shocking both to law and sense.

The Lords were much divided in their opinions about this point. And those who pleaded against the paternal faculty of naming tutors with a privilege of not being subject to answer for omissions, yielded, That a father might by granting a bond oblige his son and heir not to quarrel the tutor named, upon the account of omissions; and so do that *per ambages*, he could not directly do. However, it was found by the plurality, That the defenders *qua* tutors were liable only in the terms of the pursuer's father's nomination, for their actual intromissions, and not for omissions; but in regard they were also curators, not by nomination of the father, but by the minor's election, they were liable *qua* curators for omissions, as well as intromissions.

*Forbes, p. 391.*

No. 251.

A curator *ad litem* authorized to give in for a minor a renunciation to be heir to his father.

1711. January 5. GEORGE PYPER, Merchant in Montrose, Supplicant.

George Pyper, a minor, about eleven years of age, being pursued, as heir to his father, at the instance of James Innes, merchant in Aberdeen, for payment of £.296 Scots, and a day taken for the defender to renounce to be heir, the Lords, upon a petition offered for the minor, authorized William Smith, merchant in Montrose, the petitioner's uncle, to be curator *ad litem*, to sign and give in for him a renunciation to be heir to his father.

*Forbes, p. 473.*

No. 252.

What kind of voucher of payment will defend the debtor against the subsequent suit of the minor?

1711. January 13.

JAMES FORRESTER, Son to the deceased William Forrester, Writer to the Signet, and His TUTOR, against ROBERT FORRESTER, late Bailie in Edinburgh.

In the action at the instance of James Forrester and his tutor against Robert Forrester, for payment of £.73 owing by him *per ticket* to the deceased William Forrester, James' father, the pursuer offered to prove, by the defender's oath, that the ticket was in William Forrester's hands at his death, which the defender unwarrantably got up and retired. The defender having deponed, that he paid the money to one of the pursuer's tutors in presence of and with consent of the rest, who thereupon delivered up his ticket, the pursuer alleged, That it were dangerous to sustain a debtor's oath, that he retired his bond from his creditor's tutors, upon payment made to them, as a sufficient exoneration of the debtor, law having fixed a rule, that the debtors of minors shall pay to their tutors only upon getting a discharge, which is necessary, not only to exonerate the debtor, but also to constitute a charge against the tutors for what they uplift.

Answered for the defender: That he having retired his ticket, is free by the brocard, *instrumentum penes debitorem repositum præsumitur solutum*, although it were