

No. 22. not advantageous ; and therefore it could be no ground of a summary charge against them, but only the foundation of an ordinary action. Answered, That a tutor having submitted his pupils' claim, and signed in their name, if a decret-arbitral follow, decerning the pupils, and the tutor in their right, to perform such deeds, and bearing a clause of registration for letters of horning to pass thereon, the same will be a good ground for a summary charge against the pupils, when they come to majority ; the tutor's deed being theirs, he integrating their legal incapacity to act. And as pupils have the benefit of transactions made by their tutors, in their name, so they must likewise be bound *ex facto tutoris* ; and if there be any prejudice, they have the privilege to seek restitution *in integrum* ; and decreets-arbitral now are the strongest of all sentences, being only impugnable for bribery, corruption, or falsehood. It is true, tutors have no power to submit or transact their pupils' clear liquid rights, where there is no *lis, nec metuitur*, or is heritable ; for their submitting on such is *species alienationis*, unless the authority of a Judge be interposed ; but in dubious, controverted cases, it may be good service to the pupil *vexationis redimendæ gratia* to prevent expenses, and the risk of losing the cause : And, in January, 1691, the Lords sustained a transaction made by Fletcher of Aberladie's tutors, whereby they bought the widow's life-rent at five or six years' purchase, and she died within the year ; but, in that case, the minor had ratified it upon oath, never to revoke it, being before the prohibitory act in 1681. The Lords did not determine how far tutors might bind minors by submissions, but only found, That the decret-arbitral could not afford the ground of a summary charge against the pupil, but only the foundation of an action, in which they would be decerned to implement and fulfil, unless they instructed evident lesion.

*Fol. Dic. v. 2. p. 404. Fountainhall, v. 2. p. 627.*

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1713. July 29.

GEORGE MONTGOMERY and his LADY *against* MR. JOHN MONTGOMERY of Wrae, his Father.

No. 23.

The Lords appointed a bill of horning to pass against Mr. John Montgomery, for implement of the marriage-articles betwixt his son and his lady, albeit the contract bore only a consent to registration in the books of Council and Session, that all execution might pass thereon in form as *effeirs*, without any express consent, that a decret might be interponed thereto ; for a decret of the Lords is interponed by registration of the articles, warranting all execution in general ; which can never be understood to entitle the parties only to an action, seeing that was competent without any clause of registration.

*Fol. Dic. v. 2. p. 403. Forbes, p. 715.*

See APPENDIX.