

No. 312.
security that
it shall be
applied for
their behoof.

The charger, on the other hand, maintained it as a settled point, that a father acting as tutor or curator for his children is not obliged to find security.

Upon advising minutes, it was

Observed on the Bench : The ordinary rule, that a father is not obliged to find security for his intromissions, does not apply to this case.

The Lords unanimously found, that the money could not be paid without security.

Lord Ordinary, *Meikven*.

For the Suspenders, *Ja. Gordon*.

Alt. *Ja. Fergusson, jun.*

Clerk, *Menzies*.

D. D.

Fac. Coll. No. 108. p. 239.

1796. *March 9.*

MACKAY against HOUSTON.

No. 313.

In the county of Sutherland where enrolment to vote for a member of Parliament is competent on lands held of a subject superior, a charter granted by a factor *loco tutoris* for the superior who was fatuous and cognosced, was sustained by the Court of Session, though it was urged that such deed was beyond the ordinary acts of administration.—See APPENDIX.

Fol. Dic. v. 4. p. 385.

1798. *February 22.*

DANIEL HAMILTON MACNEIL, against ROGER H. M. MACNEIL, and DR. MACNEIL.

No. 314.

A declarator of contravention and irritancy raised in name of an infant against his father, allowed to proceed under authority of a tutor *ad litem* afterwards appointed.

A declarator of contravention and irritancy was raised in name of Daniel Hamilton Macneil, a boy of ten years of age, second son of Roger H. M. Macneil, against his father, as heir in possession of an entailed estate, and against Dr. Macneil, to whom the former had granted an heritable bond over it.

The action was brought by direction of the boy's mother, who lived separate from her husband.

The competency of the action was objected to ; but the Lord Ordinary allowed it to proceed in name of a tutor *ad litem*, and appointed the counsel for the pursuer to suggest a proper person for the office. The defender, in a petition, contended, That it was incompetent and *mali exempli* for a married woman, herself under curatory, to bring an action in name of her infant child against his father, his legal administrator ; 16th November, 1704, Ross, No. 258. p. 6050. Ersk. B. 1. Tit. 7. § 13, 14. : That no injury could be qualified from allowing the claim to lie over till the infant came of age ; and that there was a hardship in permitting the action to proceed under authority of a tutor *ad litem*, whose duty would be

confined to the conduct of it, and who would not be subject to expenses, however ill founded might be its conclusions. No. 314.

It was observed on the Bench, That a child may have many reasons for bringing an action against his father; but before a summons is raised against him, a previous investigation should take place with regard to the grounds of it, and for that purpose a factor *loco tutoris* should be appointed by the Court.

On the other hand, it was thought, that the action was competent with the appointment of a tutor *ad litem*, as directed by the Lord Ordinary; 16th January, 1740, Johnston, No. 270. p. 16346; and that if the tutor proceeded in the action, he would be responsible for the conclusions, as well as for the conduct of it.

This and a second petition, 9th March, 1798, were refused without answers.

Lord Ordinary, *Dunsinnan.*

Act. *John Clerk.*

Alt. *Hay, Jo. Dickson.*

Clerk, *Menzies.*

D. D.

Fac. Coll. (APPENDIX) No. 5. p. 9.

1798. *March 6.*

LADY CHRISTIAN GRAHAM and Others, *against* The EARL of HOPETOUN.

No. 315.

It is not a relevant objection to curatorial inventories, that of three relations of the ward by the father's side called in the action, for making up, two of them were not his nearest in kin.

A tutor being also the heir at law of his ward, purchasing lands for him with his moveable funds, is bound, in the event of his ward's death, either to account for their price to his executors, or to give them a conveyance to the lands.

The tutor of a fatuous person, although his heir a law, is not accountable to his executors for rents employed in paying heritable debts affecting the estate.

A tutor being also the heir at law of his ward, is not entitled, in accounting with his executors, to take credit for money employed in re-building a mansion-house and deer-park, and in making ornamental plantations.

Fac. Coll. No. 66. p. 150.

* * * This case is No. 143. p. 5599. *voce* HERITABLE AND MOVEABLE.

1800. *February 5.*

LORD REAY *against* JAMES ANDERSON and Others.

No. 316:

Hugh, Lord Reay, who held the estate of Reay under a strict entail, having been cognosed for insanity in 1768, his three uncles, and the survivor of them, were appointed his tutors dative. The tutor of a person cognosed for in-