

No. 54.
find caution
within the
year, his ser-
vice expires,
and the King
may name a
tutor-dative.

law that is served tutor within year and day, gif his caution be not received before the Judge within the said space, yea, albeit his caution be offered and received, before the Judges received the tutor-dative's caution; for if the tutor of law's caution be not found within the said space, the service expires in the self, and prescribes in sic sort, that the King may dispoñe the dative thereof, quia via solemnia juris debent per impleri per tutorem legitimum infra annum et diem, neque purgatur mora ejus; although within eight days after the prescribed time he offered and gave caution; yea albeit he both offered caution, and the same received and marked before the tutor-dative offered and gave caution, in pretermitting the time prescribed to do that thing which is principally required. De necessitate actus tutoris legitimi locum cedit tutori dativo, who may at all time thereafter, viz. after the issue of year and day, seek the said office of tutory from the King; nor yet is it sufficient to the tutor of law being serving in due time to offer caution at any time thereafter when he pleased, quatenus actus debet per impleri infra annum, alioqui nihil agitur, neque purgatur mora, although he either offer or give caution before the dative; for divers causes; 1st, Quia quoties pœna infligitur a jure, vel aliquid prætermittit a tempore prescripto, a jure mora non est purgabilis, quia nihil agit, consetur, ut dictum est; 2do, If the gift be given to the tutor-dative before the tutor of law offer caution, accumulando jura juribus purgatio moræ non admittitur, howbeit the time to find caution prescribed is not come, quia jam obstat medium impedimentum dativi, et hoc de facto diligentia legitimi tutoris, vel ratione ejus culpæ qui negligenter prætermittit, quod fateri debuit, as was in the action betwixt Mr. Thomas Craig, advocate, and William Johnston, (*infra;*) for this Johnston was served tutor of law, and pretermitted the caution until the year and day was gone; after the which Mr. Thomas Craig got the office of dative from the Prince, and offered caution, but the Bailies of Edinburgh remembering that William Johnston was served tutor of law, denied to receive Thomas' caution while they were farther advised, which, when William Johnston heard the combat, three days after the year and day, and offered caution, which the Bailies received; and Mr. Thomas perceiving this, meaned himself to the Lords, who received his caution; but the question thereof was moved before them, Which of the two should have the administration of the bairn called Johnston, brother's son to the said William, and sister's son to the said Mr. Thomas Craig? But the Lords, after divers informations given by the parties foresaid, decerned as said is, that the dative should be preferred for the cause foresaid.

Calvil. MS. p. 10.

1574. July 1. WILLIAME JOHNSTOUN *against* MR. THOMAS CRAIG.

No. 55.

The tutor of law sould be servit tutor, and also find caution sufficient within zeir and day, de fidei administratione, ac de rationibus reddendis: And gif he sufferis zeir and day to pass over without finding of caution, albeit he wes servit

tutor within zeir and day, the tutor dative lauchfullie maid and constitute, and findand and offerand sufficient caution, sould be preferrit to him in the office of tutorie.

No. 55.

Balfour, p. 117.

1575. February 4. THOMAS HUNTER against DUNCAN HUNTER.

The tutor dative is maid and gevin be the King, quha may dispone the samia at his awin plesour to ony persoun be his gift thair of under the quarter seill.

No. 56.

Balfour, p. 115.

1575. December 2. N. KILGOUR in Kirkaldie against N.

Albeit the pupill be air and successour to ony landis or uther rentis to his gudschir on the motheris syde, nevertheles it is not leasum to the said gudschir to give ane tutor testamentar to him, specialli his father beand on life, quha is tutor of law to him.

No. 57.

Balfour, p. 116.

1577. February 5. A. against B.

There was a minor charged to give and discharge upon an obligation or bond, for fulfilling of the which he was lawfully bound to keep and observe: He excepted, that his curators were not charged to that effect, and he, without curators, and being not authorised, had no power to stand in judgment. It was answered to him by the pursuer, that the Lords might give him instantly curators *ad lites* and *ad negotia*. It was found by the Lords, that albeit they might *instante* give him curators *ad lites*, yet they could not give curators *ad negotia*, but conform to the common order and act of Parliament.

No. 58.

Although a curator *ad litem* may be appointed at the Bar, the appointment of a curator *ad negotia* requires the forms prescribed by act of Parliament.

Colvil MS. p. 263.

1583. March. LORD SANQUHAR against CRICHTON.

The Lord Sanquhar desired letters conform to a tack and assedation. Compear- ed one John Crichton, son to the tutor of Sanquhar, and alleged no letters ought to be granted, because he had tacks for terms to run of the said duties, which were the teind-sheaves of the kirk of Kirkconnell, set by the commendator of

No. 59.

The principle of the common law, Tutor *in rem suam auctor*