

- No. 78. curred to him in making his testament. But had the present case occurred to Mrs. Campbell, that two of her three executors named jointly, would immediately proceed to the administration, without so much as giving notice to the third that he was named executor, it must be presumed that she would have discountenanced that partial step, by an express prohibition of taking any step but by joint concurrence. "The Court notwithstanding sustained the title."

Fol. Dic. v. 4. p. 297. Sel. Dec. No. 221. p. 285.

SECT. XV.

Tutors and Curators.

- No. 79. 1602. March 11. LD. AIRTH *against* —————.

A BOND having been found null, as granted by a minor, having curators, without their consent, this objection was also repelled, That the act of curatory was null, eight being chosen, one of whom had neither made faith nor found caution; notwithstanding whereof, the Lords found the act of curatory complete.

Fol. Dic. v. 2. p. 384. Kerse.

* * This case is No. 48. p. 8938. *voce* MINOR.

No. 80.

Three tutors, being equally nominated by the testator, one dying, and another refusing to accept, the Lords found, that the whole office devolved on the third.

1609. December 12. FAIRSIDE *against* ADAMSON.

GEORGE FAIRSIDE charged Adamson, the eldest son and apparent heir of umquhile James Adamson of Cowthrole, to enter heir to his umquhile father. The minor offered to renounce. It was alleged, That the renunciation could not be valid, because he was not authorised with tutors. It was answered, That the minor's mother, who was nominated tutrix-testamentar, would authorise. The pursuer replied, That her consent was not valid, because, by the testament, the Laird of Smeiton, Hepburn, the bairn's good-dame, and his mother, were nominated tutors equally, and therefore, the good-dame being dead, and the Laird of Smeiton renouncing the office, the mother's office was extinguished. Notwith-

standing whereof, the Lords found the power of the full office of tutory was devolved in the mother's person, and that her consent was lawful.

Fol. Dic. v. 2. p. 384. Haddington MS. No. 1679.

1612. January 8. EDGAR against JACKSON.

IN an action of count and reckoning, pursued by the son and heir and executor of umquhile Captain Edgar, against John Jackson, son and heir of umquhile John Jackson, who was one of the tutors of the said Edgar, pursuer, the Lords found, That no process could be granted for count and reckoning of the testate goods for a third, because that pertained to the relict; that no count and reckoning could be granted for another third, because there was another executor; and the pursuer, having three tutors, could not pursue this defender, but for a third of the goods belonging to the pursuer, unless he would expressly prove John Johnston's particular intromission with the goods acclaimed.

Fol. Dic. v. 2. p. 383. Haddington MS. No. 2346.

1612. February 22. HUNTER against WILSON.

A MINOR having two tutors to him *conjunctim* may pursue every one of them for his gear *pro ratis portionibus*, and needs not to prove their particular intromissions, but pursue every one of them for the half, because they were bound to intromit, and do their diligence; but one of the tutors will have his action of relief against the other tutor, according to his intromissions, because each one of them should answer to his colleague for his particular intromission.

Fol. Dic. v. 2. p. 383. Haddington MS. No. 2409.

1621. January 23. STEWART against KIRKWOOD.

FOUND, That a tutory testamentar expires not when one of them deceases, albeit they were named conjunctly.

Fol. Dic. v. 2. p. 384. Kerse MS. fol. 133.

1628. February 9. JAMES CHALMERS against MARGARET CUNNINGHAM.

A RENUNCIATION of a minor being quarrelled, that it was only subscribed by two of her curators, there being four chosen by the acts of curatory, sustained notwithstanding by the Lords.

Fol. Dic. v. 2. p. 383. Spottiswood, p. 346.

No. 80.

No. 81.

In an action between a minor and the heir of one of his three tutors, the defender was found liable only for a third of the goods belonging to the pursuer, unless the pursuer would prove his intromission with the goods claimed.

No. 82.

No. 83.

No. 84.