

No. 83.

1622. *January 24.* TAYLOR *against* FORRESTER.

Taylor against Forrester's suspension of a decree of deliverie of the pupils to Forrester, tutor dative. Reason, the pupils are with them seven years; and albeit they were past 7, the tutor is father brother *et alioqui successurus* to them, and is a poor man, and so suspect; and eiked, that the assignee by Forrester has divers actions against the pupil competent to him as successor to their father, who was intromitter with the cedent's gear; whilk actions he man renunce before he can pursue as tutor; and he craves the bearns, that he may exhaust their goods, by their entertainment, the goods confirmed being only £.400, the annual whereof will scarcely entertain them; and she, being mother, is content to entertain them on the annual, or the half of the sum. The Lords, after they had found the letters orderly proceeded, notwithstanding of the hail reasons, except the last member of the eik, anent the entertainment, they fand that offer to entertain the bearns upon £.20 libelled relevant, she finding caution to relieve the tutor of their entertainment; therefore assigns a day to find caution, and continue the matter in the meantime.

Clerk, *Hay.**Nicolson MS. No. 49. p. 337.*1623. *February 6.* WATSON *against* WATSON.

No. 84.  
How far the  
tutor liable  
for insolvency  
of debtors.

In an action of tutor counts, Watson against Watson, the Lords found that the tutor ought not to be answerable for any debts owing to the minor by persons *qui non erant solvendo*; and that his not doing of diligence, by intenting of process, and raising of charges or letters of horning against them, could not burden him, nor make him subject to the pupil for his omission; in respect whatever should have been depursed in pursuing of such debts, was but unprofitable spending of the minor's money: And therefore the Lords found the tutors' allegiance relevant, viz. The debtors were not able to pay; but astricted the tutor to prove by the neighbours, and such others who knew the debtors, that they were repute and known in the country, to be unable either in lands or goods, to satisfy the debt owing to the minor; which being proved, the Lords declared it sufficient to liberate the tutor, albeit he had done no diligence; but if the minor would allege, that the debtors were *solvendo* in lands or goods, then the Lords would prefer that to the allegiance of their inability alleged by the tutor, and admit to the minor's probation to elide the tutors' exception of their insufficiency; which allegiance of their sufficiency being proved, they found the tutor's negligence a sufficient cause to make him answerable for the debt.

*Item*, in this same process they admitted an article of defalcation, founded upon the tutor's entertaining of the minors after the expiring of the years of the tutory, and divers years after they had chosen curators; and found that the entertainment

after the tutory should compensate with the sums acclaimed by the minors *pro tanto*, and would not put the tutor to any further process to pursue an action therefore against the minor or his curators, but found it might be received in the same process to compensate, *ut supra*.

Act. Stuart.

Alt. Lawrie.

Clerk, Hay.

Durie, p. 45.

No. 84.

1623. March 6.

STEVENSON *against* STEVENSON.

No. 85.

In the action Stevenson against Stevenson, No. 36. p. 13268. where the Lords found that the sasine could not be drawn back, it was replied for the pursuer, that the defender could not quarrel the title, because he was his tutor, who of the law was holden to have obtained the pursuer in due time seised as heir to his predecessor. Duplied by the defender, that he was not bound to serve the pupil heir, to evict the lands against himself; moreover, the precept and sasine, which was the title of the removing, is procured many years after the expiring of the years of the tutory, and after his pupillarity, so that whatever fault is therein, cannot be imputed against the defender, who was not holden to answer for any deeds done thereafter; and if any had been omitted within the time of his tutory, which is not granted, he had against him of the law, *actionem tutelæ*. The Lords found the defender being once tutor, could not quarrel the pursuer's right, albeit the tutory was expired, and albeit he defended himself with a right in his own person acquired before he was tutor.

Durie, p. 56.

1623. March 7.

LORD BARGNEY *against* HIS CHILDREN.

No. 86.

A father may pursue his son having curators *ad lites*, although he be administrator in law to him.

Durie.

\* \* This case is N. p. 94. 10418. *voce* PERSONAL and TRANSMISSIBLE.

1624. March 17.

L. TOUCH *against* TENANTS of DUNGLASS.

No. 87.

In an action pursued by the Laird of Touch, as assignee constitute by William Hume, Provost of Dunglass, to the duties of the Provostry, addebted to him, against the tenants intromitters, and addebted in payment of the said duties, the Lords found the payment made of the said duties by the tenants to the Earl of Hume, who was father to the Provost, for he was a bastard and a natural son to the Earl.

A father is administrator for his bastard son.