

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.

No. 87. of Hume, and which payment was made to the father, the son who was Provost being minor all the years of the payment, to be relevant to defend the tenants, and that the said payment was made *bona fide*, and so sufficient to liberate the tenants; albeit it was answered for the pursuer, that the said payment could not be found good, which was made by them to the father, seeing the father could not be found lawful administrator to a bastard son, as *in filiis legitimis*, especially seeing the son being a Church-man, viz. a Provost, of whose benefice the father is not presumed to be lawful administrator: Likeas, the pursuer, to exclude *bonam fidem*, and to put the defenders *in mala fide*, offered to prove, that the Provost had obtained letters conform, upon this provision to the Provostry, before any payment made to the Earl of Hume, which Provost also had chosen an administrator and Economus to him in his benefice, and which Economus was in use to set tacks to divers persons, of the said benefice, and to receive the Provost's duties, and to give acquittances thereupon; likeas, the same tenants were convened at the Provost's instance and this Economus *per expresum* in an action of improbation, which was a sufficient intimation that he was the person to whom the only payment should have been made, and to none other; which reply was repelled, and the exception and payment made to the father sustained, and found done *bona fide*, seeing the father was found to be lawful administrator to his bastard son was in these things which are given to him by the father, as was this Provostry, whereto he was presented, and provided by the father; and also, in respect that the defenders offered to prove, that the duties paid by them to the father, were converted and applied by the father to the entertainment and maintenance of the Provost at schools and virtue, partly within, partly without the country, which was found, being applied to that use, to be as sufficient, as if the payment had been made to the Provost's self or to his Economus. Quia extraneus potest dare curatorem rebus a defuncto minori relictis.

Act. Stuart & Craig.

Alt. Hope.

Clerk, Gibson.

Durie, p. 120.

No. 88.

1624. June 26. DRUMMOND against LD. CUNINGHAMHEAD.

Found, That where a renunciation to enter heir is subscribed by a minor, with consent of his curators, the curators are not understood bound as cautioners for him, or otherwise obliged for him to warrant that deed, and that they are no further bound than to consent.

Fol. Dic. v. 2. p. 488.

\* \* This case is No. 1. p. 3465. voce DIES INCEPTUS.