

No 26.

competent action to have a portion of the living being decerned by the Judge to be assigned to him for sustentation of himself and his wife; but it was not pursued *hoc modo*, and so the curator, before count and reckoning, may piece and piece be removed from the minor's whole estate, which is hard in law.

Act. Baird.

Alt. Mowat.

Clerk, Gibson.

Durie, p. 587.

* * * Auchinleck reports this case :

THE Laird of Haddo being but 20 years of age, and married, pursues the Laird of Ludquharn his curator *sine quo non*, upon a warning made at Whitsunday 1630, to remove from his house and mains of Haddo. It is *alleged* by the defender, That he cannot be decerned to remove, because the pursuer was not seised, and so had no title. *2do*, He was minor, and so could not pursue his curator to quit a part of his estate, until he made count of the whole intromission, whereof the mains was a part, which counts were presently depending. To the *first* part it was *replied*, That his house and yards were equivalent to his aliment, for which he might pursue his curator; for the same reason, the *second* reason of the exception ought to be repelled, and Ludquharn cannot object to the pursuer, that he is not seised, and that he was not served or seised, he being his chief curator, and keeper of all his writs whereby he might seek service. THE LORDS repelled the exceptions in respect of the replies.

Auchinleck, MS. p. 199.

1631. December 17.

AGNEW against CORCAPHIE.

No 27.

SIR PATRICK AGNEW being infest in a wadset of a mill, grants a back-tack to the wadsetter, for payment of a certain duty, and for not payment of the tack-duty, pursues the tacksman, either to remove, or else to find caution for payment of the duty of the back-tack. Compears Corcaphie, who had comprised the said mill from the wadsetter, after the said wadset; and being admitted, *alleged*, That Sir Patrick can have no action of removing, till first his sasine were produced. To which it was *answered*, That he had to do now, only with his own tenant, who had taken a tack from him, and for not paying of his duty was pursued for removing, in which case he had no necessity to produce his sasine; which reply the LORDS found relevant.

Auchinleck, MS. p. 198.