

1664. June 17. JAMES JUSTICE *against* EARL QUEENSBERRY.

No. 139.

James Justice, as having right to a bond of 6000 merks, due by the Earl of Queensberry, pursues the Earl, and the Lord Drumlanrig, his son, as taking his estate, with the burden of his debt, to pay it; who alleged, No process, because the pursuer's right was an assignation, granted by a tutrix, not bearing in name of the pupil, or as tutrix, in his name, because, being in infancy, he could not subscribe; but bearing to be done by her, as taking burden for the pupil.

The Lords found the assignation not formal, not bearing the pupil disponer with his tutrix; but yet found the letters orderly proceeded, the charger, before extract, producing a ratification by the pupil and tutrix, formally done.

*Stair, v. 1. p. 203.*

1664. July 21. SCOT of Braidmeadow *against* SCOT of Thirlstoun.

No. 140.

Scot of Braidmeadow pursues Scot of Thirlstoun, his curator, for count and reckoning; who alleged, Absolvitor, because the pursuer having convened the defender, before the Sheriff, to count and reckon, and to renounce his curatory, he was then decerned to renounce the office, and did count for by-gones. The pursuer answered, No respect to that decree, because it was during his minority; in which time the defender had a competent defence, that he was not countable; and for the renunciation of the office, it was a great lesion to the pupil, which the curator should not have yielded to, but proponed a defence against the same, that he could not pursue his curator to renounce, unless he had condescended, and instructed malversation. The defender answered, That he had just reason to suffer sentence, because his pupil was irregular, and meddled with his own rents by force, and mispent the same.

A decree obtained against a curator by a minor for liberation of the curator from his office was found not to liberate the curator from the office, even for omissions after the decree.

The Lords, notwithstanding of the decree, ordained count and reckoning; and found, that the decree could not liberate the curator, even for his omissions after, but reserved to the defender, before the auditor, to condescend what deeds the pupil had done before, as being relevant *pro tanto*.

*Stair, v. 1. p. 220.*

1664. November 18. SMITON *against* NOTMAN.

No. 141.

The deceased John Smiton did, by his latter-will, nominate Margaret Curror, his spouse, Robert and Bessie Smitons, their bairns' executors, and did nominate his wife tutrix, and George Curror of Houden, James Notman, burgess of Selkirk, and James Curror, his father-in-law, overseers. The relict meddled as executrix and tutrix, having confirmed the testament, and after her second marriage did

Protutors are liable as tutors.