

1665. *June 12.*SWINTON *against* NOTEMAN.

A WOMAN being left tutor to her children, and thereafter marrying, and so losing her tutory, her husband behaves himself as tutor and administrator: The minor thereafter convenes him for count, reckoning, and payment, not only of what he intromitted with, but for his omissions, and what he might have intromitted with; and so contended to make him liable in every thing as a tutor, even for his neglects in desperate debts; for which the civil law was adduced.

The Lords found him not liable to count but for what only he did intromit with, and for what he might have done upon that subject of intromission, but no farther, and not for his omissions in any other thing belonging to the minor. But they made an Act of Sederunt for the future, that pro-tutors should be liable in *omissa* and *commissa*, as well as other tutors, in all time coming.

*Act.* Wallace.*Alt.* Lockhart.*Advocates' MS. folio 54.*1655. *June 20.* LORD LOUTHIAN *against* The TOWN OF JEDBURGH.

THE Lord Louthian against the Town of Jedburgh, and they against him: there being mutual declarators by other of thir parties against others, to hear and see some lands lying contigue to the said town, belonging in property to my Lord, as a part of his barony of Ancrum, declared free of any jurisdiction the town could pretend over them: And, on the other hand, the town contending they belonged to their jurisdiction, in so far as it was offered to be proven that, in their charter of erection, they have all the privileges of a free burgh royal, granted to them within their town, and parts and pertinents thereof; and it is offered to be proven that thir lands now controverted are parts, &c. of their town, in so far as they have been in use to hold courts, fine and imprison the inhabitants of these lands, as burgesses; likeas the whole inhabitants thereof are burgesses, and enjoy the hail privileges of burgesses, and the crafts and merchants dwelling there have been in constant use to subject themselves to the town deacons; and in all things, either active or passive, competent to burgesses of burghs royal, they have enjoyed them these 40 or 50 years: All which is sufficient in law to induce a right of jurisdiction over them.

ANSWER,—Thir lands being a part of his barony, wherein he stands infeft, holden of the king, and the inhabitants being his tenants, he has been in possession of jurisdiction there, by virtue of his infeftment, past memory of man; and any use or possession his tenants have had of making themselves burgesses there, and subjecting themselves to their jurisdiction, cannot prejudice him, nor yet can his connivance at that subjection hinder him to seek this declarator for the future against the said town; especially seeing thir lands do not hold burgage of the burgh, nor are they expressed in their charter of erection. And it is inconsistent both with law and reason that Jedburgh should have jurisdiction when they have neither property nor superiority; which is in effect to make *accidens sine subjecto*, since *imperium inhæret territorio*.