

sum lent to the tutor was employed for the pupil's behoof. The Lords did prefer the pupil, and found that a tack set by the tutor could not endure longer than his own life, or expiring of his office, unless it were for a cause applied to the pupil's behoof, and that the tutor being obliged was not relieved thereof.

*Gosford MS. p. 158.*

No. 168.

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1671. July 19. SHARP against CRICHTON.

The Lords were of opinion, that a tutor could not warrantably make a sum that was heritable before his tutory, moveable, *ad hunc effectum*, to empower his pupil to testate thereon, in prejudice of his heir; but they did not think but a tutor might have rendered heritable a sum that was moveable before his office, though thereby the pupil would have been incapable to testate thereon.

*Harcarse, No. 14. p. 296.*

No. 169.

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1671. November 18. CASS against ELEIS.

A pro-curator is liable as if he were curator, though there be other curators authorised, and that not only for his intromissions, but his omissions, from the time he begins to act as curator.

*Stair.*

No. 170.

\* \* \* This case is No. 42. p. 3504. *voce* DILIGENCE.

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1672. January 3. CASS against ELLIES.

Found that a tutor intromitting with coal-rent, where there is quotidian *obventu*, in the beginning of that year wherein the minor becomes major, is not obliged to continue his intromission a day after the majority, though it happen between legal terms.

*Harcarse, p. 296.*

No. 171.

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1672. January 3. A against MARQUIS of HUNTLY.

A tenant of the Marquis of Huntly being pursued to remove by him and his curators, excepted upon a tack set by my Lord Middleton, as tutor to the Marquis.

No. 172.

No. 172. Replied, A tack set by a tutor could endure no longer than the tutory; which reply the Lords sustained, though the advocate and others thought it hard.

*Harcarse, No. 16. p. 296.*

1672. *January 3.*

*A. against B.*

No. 173.

A curator having pursued the other four to find caution to save him free and skaitless at the pupil's hands, in respect they managed all things at their pleasure to the pupil's prejudice; and likewise the cautioner for the tutors was dead, without any to represent him;

The Lords sustained process only for renewing the caution, in case the other was insufficient.

*Harcarse, No. 17. p. 296.*

1672. *February 20.*

*CARSTAIRS against MONCRIEF.*

No. 174.

The curator's consent is effectual where the deed is not directly in his favour, though he have a consequential benefit thereby.

*Stair.*

\* \* This case is No. 73. p. 8962. *voce* MINOR.

1672. *June 27.*

*MR. JAMES STIRLING against The REMAINING TUTORS of JEAN GOVAN.*

No. 175.

A tutor craved that the co-tutors should find caution to keep him skaitless from their administration. This found incompetent, as the remedy was to remove them when they transgressed.

Mr. James Stirling being uncle on the mother's side to Jean Govan, and three or four other persons related to her on the father's side, were appointed tutors dative to her; and now Mr. James alleging that the tutors on the father's side did act without him, and did not acquaint him with their meetings, and did out-vote him in the pupil's affairs to her detriment, albeit, by the law all tutors being liable *in solidum*, he would be liable for their mal-administration; and therefore craved, that the remaining tutors should find him caution to keep him harmless for their acting, or otherwise they would suffer him alone to act, and he should find caution to keep them harmless; as also, that they might renew caution, seeing their cautioner was dead, and none to represent him.

The Lords found the libel not relevant, there being a competent remeid in law to the pursuer for removing the defenders as suspected tutors, if they did malverse, but they sustained only the pursuit for renewing of caution.

*Stair, v. 2. p. 91.*