

1676. 28th January. STRANG *against* HAMILTON.

IN a pursuit for breach of arrestment, pursued by one Strang *contra* Hamilton, the Lords found, that the carrying away of corns, and stacking them for preservation, after an arrestment had been laid upon them by one who had an infeftment of annualrent furth of the lands whereon they grew, was no breach of the arrestment; but where the arrestment is laid on by the master of the ground, then found the removing the corns off the ground of his lands to any other place would import a breach of the arrestment: for the drawing all the stoucks to one rig, or stacking them in a barn-yard, to preserve them from beasts or weather, is *utilis negotiorum gestio*, and makes the arrester's condition better; and it were ridiculous to allow him the power to quarrel it, unless imbecilment [embezzlement] can be made appear. *Infra*, No. 496, § 2. [Balfour *against* Pidgeon, 10th October, 1676.]

*Advocates' MS. No. 460. folio 239.*

1676. January. ANENT MINORS AND THEIR CURATORS.

THE Lords have authorised tutors to sell their minors' lands within burgh, by their decreet, at ten years purchase, and booths at twelve years; because, *1mo*, They set more surely than other dwelling-houses. *2do*, Are not so subject to fire. *3tio*, Put the proprietor to no expense in roof reparations, or keeping water tight and wind tight. As for the lands in the country, they have authorised the tutors to sell them at seventeen years purchase; which is just the annualrent at six of the hundred, and equals the stock in some less than seventeen years.

I have heard it queried, If the tutor or curator of him that is heritor in a forty-shilling land can compear for his pupil, and give his vote to the Commissioners of Parliament at the head Court. I think not: for he cannot be chosen, neither being an heritor, frecholder, nor infeft; *ergo*, he cannot choice. As for the heritor himself, he cannot, in strict law, be admitted to vote till he be major and twenty-one years complete. *3tio*, We follow the civil law in not being strict in exacting caution from testamentary tutors, *quia judicium defuncti eos approbavit*; but they make only faith and give up inventory, conform to the 2d act of Parliament in 1672; but if that tutor confirm the defunct's testament, or turn somewhat suspect, as being poor or malversing, I think, in these cases, he ought to find a cautioner.— See Gudelinus, *de Jure Novissimo*, lib. 1, cap. —. p. 41. See Stair, tit. —. *Of Tutorial Obligations*, § —. *Codex Fabrianus*, libro 5, tit. 25, *de Tutore vel Curatore qui satisfactionem non dederunt*, *defin.* 1.

*Advocates' MS. No. 461. folio 239.*