

No 13. providing it do not stop the advising of the cause as said is. See This case No 41. p. 504.; and *voce* TUTOR and PUPIL.

*Fol. Dic. v. 1. p. 132. Fountainball, v. 1. p. 118, 129, 171, 226, 391, & 398.*

No 14.

1687. November. GEORGE ROBERTSON *against* JOHN KER.

FOUND sufficient to arrest in a minor's hand, without necessity to execute the arrestment against his tutors or curators, either personally, or by leaving a copy at the cross, though those ought to be cited in the forthcoming; and here a posterior arrester, who had arrested in the curator's hands, was competing.

*Fol. Dic. v. 1. p. 133. Harcarse, (ARRESTMENT) No 92. p. 18.*

No 15.

A decret against a minor, and his curators not cited with him *in initio litis* upon two diets, but only cited *cum processu*, by virtue of an incident to appear on two days warning, was turned into a libel.

1705. December 28.

Captain ALEXANDER GAVIN *against* SIR ROBERT MONTGOMERY of Skelmurly.

SIR ROBERT MONTGOMERY of Skelmurly being charged upon a decret obtained against him and his curators, at the instance of Captain Alexander Gavin, where the curators were not cited *in initio litis* with the minor upon the *induciae legales* of two diets, but *ex post facto* only cited *cum processu* by virtue of an incident to compear upon days warning; THE LORDS turned the decret into a libel.

*Fol. Dic. v. 1. p. 132. Forbes, p. 58.*

No 16.

The Lords sustained the objection to a sale of a minor's lands, that the tutors and curators of the minor were not called, and found they could not be called by a diligence.

1752. Feb. 18. & June 26. DALGLEISH *against* HAMILTON.

DALGLEISH, as creditor to James Hamilton late provost of Kinghorn, brought a process of sale against Hamilton his son and heir, of certain houses and tenements lying about Kinghorn; in which it was *objected* by the defender, that the process could not proceed, in respect the defender was a minor, and his tutors and curators were not called.

The pursuer having applied to the Ordinary, for a diligence to cite the tutors and curators, the Ordinary stated the case verbally to the Lords; and the LORDS, in respect the defender was minor and not pupil, having advised the Ordinary to grant diligence, he granted it accordingly.

They considered the case of minor and pupil to be different. A tutor acts for the pupil who is himself considered nobody; whereas a minor acts with the curator; and as a husband may be called by a diligence, so a curator might.

But, upon advising petition and answers, the LORDS sustained the objection to the sale, that the tutors and curators of the minor were not called, and found they could not be called by a diligence.

*Fol. Dic. v. 1. p. 129. Kilkerran, (PROCESS) No 13. p. 439.*