

1699. *November 8.* SIR ALEXANDER CUMMING OF COULTER, TUTOR TO ANDREW FLETCHER OF ABERLADY, Petitioner.

SIR Alexander Cumming of Coulter, Tutor to Andrew Fletcher of Aberlady, gives in a petition, representing, that, by the bad seasons, his tenants were broken, and had given over their rouns, so that there were fourteen chalders of victual lying waste, and he could get none to take it without a considerable ease and abatement; and therefore craved the Lords would authorise him to set a tack for three or four years, though with a diminution of the former rent, which is better for the pupil than to get no rent at all: or, *2do*. To allow the Tutor to labour it himself, and buy a stock of goods, seed, and other necessaries, which will require £200 or £300 sterling: or, *3tio*. Either to take trial themselves, or appoint the Sheriff of the shire to examine witnesses on the true value of the lands, at which they may be set; and that he had raised a process to that effect, but a year's rent or labouring would be lost if he got not a present warrant.

The Lords considered the Tutor could be only liable in diligence to set his pupil's lands by emission of placards and intimations at the neighbouring parish kirk-doors; and that it was hard for the Lords to intermeddle and interpose in all such cases: and when they have granted warrants of that kind, it is but *periculo petentis*, and the Tutor still runs the hazard; though it is a great severity that minors, and their tutors and curators, shall be reduced to that dilemma, either to give down the rent, or else their lands to lie waste; and that our law should be so defective as to provide no remedy for it. Sundry of the Lords inclined to leave the Tutor to follow his own method the best way he could; but the plurality, (though they refused the bill as it was conceived,) thought it reasonable to allow the Tutor to expose the lands to a roup, to be set to any who should bid most, at the sight of one of their number, not exceeding two years; one being within his pupillarity, he being now thirteen years old, and the other being the first year of his curatory; though all confessed it was little worth, the Lords seldom regarding these warrants given *parte inaudita*, when they come to be quarrelled by minors in a reduction. But I find this has been granted by the Lords formerly; as *5th February 1670, Tutor of Kennedy of Colzear*; and lately to the *Laird of Knox, Tutor to the Viscount of Arbuthnot*, for setting his mains, &c.

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1699. *November 10.* KATHARINE TREELAND *against* PATRICK THOMSON.

KATHARINE Treeland, relict of William Thomson, merchant in Glasgow, pursues reduction of a testament made by him, a few days before his death, in favour of Patrick Thomson, his chirurgeon, who furnished him medicines and drugs during his sickness, to the prejudice of a prior testament he had made in favour of his wife, they having no children alive. Their reasons were, That he was imposed on to make this last testament, leaving all to one who had no manner of relation to him, save only the name; and that he was upwards of eighty; and that ministers, writers, physicians, and chirurgeons, had great opportunities