confined to the conduct of it, and who would not be subject to expenses, however ill founded might be its conclusions. No. 314.

It was observed on the Bench, That a child may have many reasons for bringing an action against his father; but before a summons is raised against him, a previous investigation should take place with regard to the grounds of it, and for that purpose a factor *loco tutoris* should be appointed by the Court.

On the other hand, it was thought, that the action was competent with the appointment of a tutor *ad litem*, as directed by the Lord Ordinary; 16th January, 1740, Johnston, No. 270. p. 16346; and that if the tutor proceeded in the action, he would be responsible for the conclusions, as well as for the conduct of it.

This and a second petition, 9th March, 1798, were refused without answers.

Lord Ordinary, *Dunsinnan.* Act. *John Clerk.* Alt. *Hay, Jo. Dickson.* Clerk, *Menzies.*

D. D. *Fac. Coll.* (APPENDIX) No. 5. *p.* 9.

1798. *March* 6.

LADY CHRISTIAN GRAHAM and Others, *against* The EARL of HOPETOUN.

No. 315.

It is not a relevant objection to curatorial inventories, that of three relations of the ward by the father's side called in the action, for making up, two of them were not his nearest in kin.

A tutor being also the heir at law of his ward, purchasing lands for him with his moveable funds, is bound, in the event of his ward's death, either to account for their price to his executors, or to give them a conveyance to the lands.

The tutor of a fatuous person, although his heir a law, is not accountable to his executors for rents employed in paying heritable debts affecting the estate.

A tutor being also the heir at law of his ward, is not entitled, in accounting with his executors, to take credit for money employed in re-building a mansion-house and deer-park, and in making ornamental plantations.

Fac. Coll. No. 66. *p.* 150.

*** This case is No. 143. p. 5599. *voce* HERITABLE AND MOVEABLE.

1800. *February* 5.

LORD REAY *against* JAMES ANDERSON and Others.

No. 316.

The tutor of a person cognosced for in-

Hugh, Lord Reay, who held the estate of Reay under a strict entail, having been cognosced for insanity in 1768, his three uncles, and the survivor of them, were appointed his tutors dative.

No. 316. sanity, cannot, of his own authority, grant a lease to last beyond the endurance of his office.

In the year 1787, General Mackay, the surviving tutor, granted to James Anderson, Thomas and James Arbuthnots, a lease of the salmon-fishings and kelp-shores of the estate, as also of certain lands on the coast, with a store-house, for the purpose of the fishings, for four times nineteen years; the tenant was to pay a grassum at the commencement of each nineteen years, at each of which periods either party was to be entitled to put an end to the lease, on giving eighteen months previous notice; and it being understood that large sums would be expended by the lessees in buildings, and other purposes necessary for the speculation, the landlord, on taking advantage of the breach, was bound to repay them to the amount of £.1500.

Hugh, Lord Reay, died in the year 1797, and was succeeded by Eric, Lord Reay, the next heir of entail, who brought a reduction of the lease.

The defenders contended, that the lease had been a prudent act of administration; the pursuer, on the other hand, asserted, that it was quite the reverse, and very prejudicial to his interest.

But parties joined issue on the abstract point of law, How far a tutor can grant a lease for a period beyond his own power of administration?

The pursuer held it to be perfectly established, that the power of granting a lease must, in every case, correspond with the right of the granter over the subject of it. The holder of a subject in fee-simple, lies under no limitations in this respect; a life-renter cannot exceed his own life-time; nor a tutor or other temporary administrator the duration of his office; Craig, Lib. 2. Dieg. 10. § 1.; Stair, B. 2. Tit. 9. § 3.; Bankt. B. 1. Tit. 7. § 29; Ersk. B. 1. Tit. 7. § 16, No. 171. p. 16285. Upon this principle, the act of sederunt, 13th February, 1730, § 8. was considered necessary, to enable a judicial factor to grant a lease even for one year beyond the continuance of the lands under the management of the Court. This rule, no doubt may, in some cases, prevent subjects under temporary management from being let to full advantage; but this inconvenience is more than counterbalanced, by its removing the dangerous consequences which might result from unlimited powers.

The pursuer, at the same time, declared his willingness, *ex gratia*, to indemnify the defenders for sums beneficially expended by them.

The defenders answered: It is sufficient for the protection of pupils or minors, that they be restored against the injudicious acts of their guardians. The abstract doctrine maintained by the pursuer, would make it quite unsafe to transact with them, and would be very prejudicial to the pupil, particularly where the landlord's period of incapacity was so indefinite, as in case of insanity, and the subject of the lease required a large advance of money, and consequently a long lease to indemnify the tenant.

Our systematic writers have followed a dictum of Craig, at a period when the benefit from granting permanent leases was not understood; and their opinion is neither supported by sound reasoning, nor a train of decisions; 12th December, 1739, Williamson against Fraser, No. 79. p. 8965; 22d December, 1739, Erskine against Daughters of Erskine, No. 133. p. 9002; 17th March, 1561,

Sinclair against Sinclair, (See Appendix ;) 21st February, 1671, Armour against Lands, No. 168. p. 16284 ; see also, Kames, Preface to Dict. and Select Decisions, and 9th March, 1775, Gillon against Muirhead and Husband, No. 168. p. 15286. No. 316.

The Lord Ordinary reduced the lease, and ordered a condescendence as to meliorations.

Upon advising a petition, with answers, the Court, upon the general principles, unanimously adhered.

Lord Ordinary, *Craig.* Act. *Solicitor-General Blair.* Alt. *W. Baird.* Clerk, *Pringle.*

D. D. *Fac. Coll. No.* 163. *p.* 366.

*** The Court have also, in particular circumstances, authorised such leases to be granted, for the evident utility of the pupil, 6th March, 1761, Roebuck against Duke of Hamilton, (not reported ;) and 6th March, 1800, Colt against Colt, No. 317. *infra.*

1800. *March* 6. OLIVER COLT *against* GRACE COLT and Others.

No. 317.
A tutor authorised by a decree of cognition to let a lease of coal for a term of years beyond his ward's minority.

Robert Colt died in the year 1797, leaving his son John Hamilton Colt in pupillarity.

Some years prior to his death, he had granted a lease of some valuable coal-works for a period of twenty years, but in consequence of the insolvency of the lessee, the coal came again into the natural possession of his infant son.

Oliver Colt, his tutor-at-law, after making an ineffectual attempt to let a new lease of the coal for twelve years, being the period of his ward's minority, entered into agreement with William Creelman for a lease of twenty-five years endurance.

As this lease extended considerably beyond young Mr. Colt's minority, it became requisite that it should receive the sanction of the supreme Court.

Oliver Colt accordingly brought an action against the next heirs of the pupil, concluding that it should be found that the granting of the lease was a rational act of administration, and that the Court should interpone their authority to it.

When the action came into Court, the pursuer gave in a condescendence, in which he offered to prove, 1*st*, That notwithstanding every proper exertion, he was unable to find a tenant who would take a lease of the coal, on suitable terms, for so short a period as twelve years ; 2*do*, That the pursuer could not himself work the coal to advantage for his pupil's behoof ; 3*tio*, That leases of coal are often, if not generally, granted for twenty-five years, on account of the great outlay of money for machinery, &c. which is indispensable at the commencement of a work of this kind ; 4*to*, That the lease in question was, in the opinion of persons of skill, beneficial for the pupil.