

1594. January 17. LORD YESTER against LORD HERRIS.

No. 66.

My Lord Yester, as tutor lawful to his brother's daughters, pursued my Lord HERRIS for exhibition and delivery to him of the eldest of the daughters. It was alleged by my Lord HERRIS, that this pursuer ought to have no process, because this pursuer being nearest heir apparent, the said daughters deceasing, he may not of the law have the keeping of them, and specially having already five of them in his hands, he could not have this sixth delivered to him. It was answered, that the provision of the law, in that case, was only to avoid suspicion of the minor's peril, if the tutor, being apparent heir, might have used violent or unlawful means to cut off the heir, that the succession might fall to him; which could not be here, because there being six daughters in number, so long as any one of them lived, my Lord could not be heir to any of the rest. Which answer the Lords found relevant, and ordained her to be delivered to my Lord Yester, pursuer.

Haddington MS. No. 475.

1595. January 15. RAA against HEIRS of LORD YESTER.

No. 67.

Decree being obtained by Arthur Raa against the heirs general of the umquhile Lord Yester, and their tutors and curators generally, he raised charges thereupon against my Lord Yester *nominatim*; which being suspended, because my Lord alleged that no particular charge could be given against him, who was not expressly decerned; the Lords found the letters orderly proceeded, because they verified him tutor by production of his retour, bearing that he was son and tutor; and likewise found, that a pupil should not be denounced, but his tutor his might be put to the horn for the pupil's debt; and farther the Lords found, that an allegiance founded upon count offered to be made by the tutor, and payment of so much as he shall be found to have in his hands of the minor's gear, could not be received, but that he either behoved to make payment, or renounce the office *rebus integris*.

Haddington MS. No. 598.

1606. January. EDGAR against INGLIS.

No. 68.

In an action pursued by Edward Edgar, tutor testamentar to ——— Edgar, his brother's son, against James Inglis, merchant, and Janet Somervill, his spouse, for exhibition of the said pupil, to the effect he may be delivered to the pursuer, his tutor, to be kept, guided, and brought up, during the time of his said office, it was excepted; That the pupil could not be delivered to the pursuer, because he was to succeed to him. It was answered, That there was another brother of the pupil's father in life, who would be preferred to the pursuer. It was duplied, That

No. 68. this pursuer, since the decease of his brother, father to the pupil, had contracted with his other brother, and received from him a disposition, assignation, and translation, of all right that he could have or succeed to by decease of his said umquhile brother, or by the decease of this pupil, his son, either heritage or moveables; and so being, by that means, nearest to succeed, and having made *factum de futura viventi successione*, he was *suspectus* tutor, at the least could not have the custody of the pupil's person. Which exception and reply were found relevant.

Haddington MS. No. 972.

1610. March 7. GORDON against GORDON.

No. 69.

In an action of reduction pursued by George Gordon of Barskeoch, for reduction of a hornsng used against Alexander Gordon, his father's brother, to whom he was heir, who was denounced to Patrick M'Ghie of Lagg, against whom and the said umquhile Alexander, as curator, Patrick Murdo had obtained a decree of removing from the lands of Duntres, and thereafter a decree of violent profits; it was found, that the horning executed against the curator was null, upon this reason, that the decree of violent profits was obtained against the minor himself, *et hoc modo*, that he occupied these lands himself, and that the curator, albeit *nominatim* summoned, yet was not proved to be curator, *tempore sententiæ*, by production of the act of curatory, and that the office should be onerous to the curator.

Kerse MS. fol. 149.

* * Haddington reports this case:

A curator may not be put to the horn upon charges raised upon a decree of violent profits given against his minor, upon probation of the minor's intromission; because the curator, being only charged for his interest, should not be denounced, but only the minor. But a tutor being decerned with his minor, may lawfully be denounced.

Haddington MS. v. 2. No. 1850.

1610. June 26. FOSTER against FOSTER.

No. 70.

The father, as lawful administrator to his daughter, discharging his annual-rent of 30 bolls victual yearly, for divers years, the same is not lawful, unless the daughter have given the discharge, she being past the age of tutory, because the father, as lawful administrator, is but in place of a curator, who may not discharge the minor's debts, but only consent to her discharge.

Haddington MS. v. 2. No. 1916.