

1630. July 17. DR. FORRESTER *against* —————.

No. 113.

Umquhile Robert Walleing, burgess of Glasgow, in his testament, nominates his spouse tutrix to his bairns, and other two friends, and also nominates her executrix. She, by virtue of her office, intromits with his goods and gear; and, before year and day, she marries Dr. Forrester, whereby her tutory ceases, yet she continues intromissatrix; and for the space of three or four years after her marriage, the other two tutors obtain a bond of the Doctor, that he will be countable upon his wife's intromissions. They charge him, according to his bond, to be countable for the sums intromitted with by his wife, and for the annual-rent. He suspends, that he ought not to pay annual-rent, because his bond bore not the same expressly. The Lords ordained him to be countable for the annual-rents.

Auchinleck MS. p. 245.

1630. March 18. LAIRD HADDO *against* LAIRD LUDQUHAIRN.

No. 114.

The Laird of Haddo convened the Laird of Ludquhair's curators for exhibition and delivery of his evidents, to the effect that he might be entered to his lands by his superiors of whom he held them; and also for defending of himself in sundry processes pursued against him. After they were exhibited, the Lords found that they should not be delivered to the minor, being yet *in curatela*, notwithstanding of the necessity he had of them; but ordained that they should be kept *in re-tentis* by the clerk, who should lend him out such of them as he had use for, upon surety to redeliver them when he had done his turn with them.

Spottiswood, p. 347.

* * * Durie reports this case :

L. Haddo a minor within 21 years, having obtained decree, against Ludquhairn his curator *sine quo non, durante curatela*, and without concurrence of any other curator, for delivery of the writs of his lands to him; and Ludquhairn suspending, that during his office he could not be compelled to deliver the same, especially seeing the writs were all exhibited before the Lords, and that they were in custody in the Lords' Clerk's hands, and that the office of curatory was not yet expired, and that there were actions of tutor-counts *hinc inde* depending betwixt them, before the ending whereof the evidents could not be given up to the minor, for they behoved to be also patent for instructing the articles of the account; the Lords found, that in respect these writs were consigned in the clerk's hands, and that the office of curatory was not yet expired, that the curator could not be compelled in law to deliver the writs to his minor, but that they ought to remain there while the

minor was Major, whereby the curator might have a valid discharge thereon, which he could not lawfully now give, and would not supply it by caution: And because the minor desired, that he might have up the evidents of such of his lands as he held by other holding than ward, whereby he might obtain himself entered and infest in the same, and so eschew the danger of nonentry; the Lords found (albeit the curator and his cautioner were liable for these dangers to the minor) yet to eschew such prejudice to the minor, and that he might not be put to such action, that he might borrow, and take upon trust from the Clerk any of his writs whereof he had use, and which he would desire for that effect, upon good security to the clerk, to re-deliver the same to him again, at the day unto the which they should be borrowed. This was done to eschew the minor's prejudice; but in legal manner they found by process, that the minor could not crave them, the curator not being removed, nor pursued as suspect; for the minor had diverted from his curator foresaid, and was married without the curators' advice, whereby they agreed not in their business.

Act. *Nicolson & Mowat.*

Alt. *Stuart & Burnet, minor.*

Durie, p. 508.

1630. July 21. VALANCES against DR. FORRESTER.

No. 115.

A man having left his wife tutrix to his children with others of his friends; if she only have intromission during her widowhood, and continue the same after she is married to another husband, although she lose her tutory by her marriage, yet she will be liable to the children for payment of the annualrent of the sum and duties uplifted by her, as well as if she had continued to be tutrix. This was found between Valances and Robert Fleming their tutor, against Dr. Forrester, who married their mother,

Spottiswood, p. 347.

1631. February 22. JOHN FINNIE against PATRICK OLIPHANT.

No. 116.

John Finnie, pupil, pursued his mother, and Patrick Oliphant, her husband, for a modification whereby he should be entertained, in respect she had her life-rent of all his estate. The mother offered to take her son and entertain him freely herself. The Lords preferred the boy's tutor to his keeping, to whom the mother was ordained to give a modification for the pupil's entertainment, though he was not a tutor testamentar, but only dative.

Spottiswood, p. 347.