

\* \* Auchinleck reports this case :

No. 116.

A tutor, by law and practick of this realm, will get the mother compelled to deliver the pupil to him, and likewise will get a modification from her of reasonable maintenance to the heir, in case the mother be infest in life-rent in all his heritage, albeit he have no ward lands, but burgage.

*Auchinleck MS. p. 242.*

No. 117.

1631. February 25. MELVILLE *against* DRUMMOND.

Umquhile David Drummond dies in England, and left behind him a son, born in England, and leaves Archibald Drummond of Gibliston his executor and administrator, who intromits with his goods and gear, both in England and Scotland. Mr. Thomas Melville takes a tutory dative to the minor, and pursues the executor for exhibition of the defunct's testament, and to make count and reckoning of his intromission. It was first excepted by the defender, that the minor was born in England, and having the most part of his estate there, there could no tutor dative be given by the Theasurer of Scotland, who had power to pursue him for exhibition of count or reckoning. It was answered, that the minor was a Scotsman, although born in England, and had means in Scotland, and was answerable and subject to the Scots law. The Lords repelled the exception, and ordained him first to exhibit the testament.

*Auchinleck MS. p. 242.*

No. 118.

It is the tutor who ratifies a deed, not the pupil with his consent.

1631. July 21. EARL OF KINGHORN *against* GEORGE STRANGFATHER.

In the action pursued by the Earl of Kinghorn against George Strangfather ; Alleged, the decret of non-entry and comprising following thereupon, could not be reduced, because the Master of Glamis, tutor for the time to the pursuer's father, had ratified the same decret and comprising. Replied, not relevant to say the tutor had ratified, unless the pupil with consent of his tutor had done it ; for the tutor alone can do no deed in prejudice of his pupil but what is null in law. Duplied, the tutor has *liberam administrationem bonorum pupilli*, and what he doth therein cannot be quarrelled as null by way of exception ; but if the minor be prejudged by his deed, he has his choice, either to pursue his tutor personally for it, or to seek to be restored against that deed. Triplied, neither of these two can benefit the pursuer, the tutor not having an heir, and the benefit of restitution not being now competent after so long a time : And there was represented a great inconveniency that might befall minors, if tutors might dilapidate their estates at their pleasure, and make private rights in prejudice of the minors, which could