

- No. 124. caution. The tutor dative pursues. The tutor lawful compares, and alleges, he can have no interest, but that he would be preferred to the tutor dative, being served tutor in law, and finding caution. It is alleged by the dative, he ought to be preferred, because he had not found caution within year and day after his service. The Lords preferred the tutor, in respect he had found caution; which cautioner would be answerable for all his tutor's intromissions, as well before as after the time of finding caution; and there is no time appointed by law of finding caution by tutors of law.

*Auchinleck MS. p. 245.*

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1632. December 14.

LAIRD AUCHINLECK *against* LAIRD CATHCART and LADY CATHCART.

No. 125.

The Laird Auchinleck, assignee constituted by ——— Craig, pursues the Laird Cathcart, pupil, as heir to his father, and the Lady Cathcart, tutrix to her son, for payment of ——— merks, addebted by the umquhile Laird Cathcart to the said Craig, cedent. It is alleged by the Lady, That albeit she be tutrix for her son, yet the office astricts her not to pay out sums of money for her pupil, except the pursuer will prove that she, as tutrix, has intromitted, or might intromit with as much of the minor's gear as will pay the debt. Which exception the Lords found relevant.

*Auchinleck MS. p. 246.*

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1632 & 1633. March 12. RUTHERFORD *against* DRYSDALE.

No. 126.

George Rutherford and Thomas Drysdale being nominated tutors, conjunctly and severally, to ——— Drysdale, minor, by his father's testament, Thomas Drysdale is only intromitter. George pursues Thomas, seeing he is only intromitter, and the said George being confirmed one of the tutors nominated, may be pursued by the pupil *in solidum*, that the said Thomas would make count of the said intromission yearly to him, as he should be required; or at the least finding sufficient caution to relieve him of all danger and action at the minor's hands. The Lords ordained him to find caution.

*Auchinleck MS. p. 246.*

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No. 127.

A tutor testamentary may be required, by the future curators, to deliver the writs.

1633. February 6. HARPERS *against* HAMILTON.

The deceased George Harper, having in his testament left his means to George and John Harpers, his oyes, and therein appointing James Hamilton, to be their tutors, and the rest of their means left by him to be paid to James Hamilton, for