

No. 287. rate she did not become debtor in the pension to her children ; and as she had the power of distribution, she might give to Lord Lewis or not as she pleased.

With respect to the third : It is not usual for curators, paying accounts due by minors, to take conveyances from the creditors. A third party paying accounts due by another upon receipt, is entitled to repetition. And though it is true, that some of the articles were furnished after the 24th June, 1745, yet they were all furnished *bona fide* before he had any accession to the Rebellion, and therefore were all equally just debts.

“ The Lords sustained the claim to the extent of the bills claimed on, amounting to the sum of £,1345 6s. 10d. Sterling.”

Act. *Ferguson.* Alt. *M<sup>c</sup>Queen and King's Counsel.* Reporter, *Strichen.* Clerk, *Kirkpatrick.*  
*W. S.* *Fac. Coll. No. 170. p. 252.*

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1757. *March 8.*

ANDREW PLUMMER *against* HIS TUTORS and NEAREST RELATIONS by the FATHER'S SIDE.

No. 288.

Tutors authorised to sell an heritable subject for the utility of the pupil, though not necessary on account of debts.

Four physicians in Edinburgh had originally joined in erecting an elaboratory, for preparing and selling chemical preparations, and a theatre for the accommodations of students attending their lectures upon chemistry. All their shares came at length into the person of one of the four, Dr. Plummer ; who continued the project alone, and died in very good circumstances.

The Magistrates of Edinburgh, desirous that the project should continue in the person of a physician, offered to the tutors of the Doctor's son an unexceptionable price for the elaboratory.

It was plain, that the work could not be continued in the person of the infant ; that the buildings of the elaboratory could not profitably be turned to any other use ; and that the bargain was highly beneficial for the infant ; for which reason, he and his tutors applied, by summary petition, to the Court, to be authorised to make the sale ; on this ground, That the *egestas* of a pupil was not the only ground for the interposition of the Court to authorise a sale, but that an utility, founded on a necessity like the present, was likewise a ground for it ; for which the doctrine of the civil law was quoted, contained in *Voet, Tit. De rebus eorum qui sub tutela, &c. § 8.*

The Lords thought they could not authorise the sale in this summary form, but that an action should be raised for that purpose ; which accordingly was done, by the pupil and tutors, against his nearest relations : And then

“ The Lords found, That it was for the utility of the pupil to sell the elaboratory ; and therefore authorised the tutors to sell it.”

Act. *J. Dalrymple, And. Pringle.*

*J. D.*

*Fac. Coll. No. 21. p. 36.*