

of Glasgow's chancellery, to be served tutor-of-law to his brother, the idiot, before the bailie of the regality of Glasgow. The tutor-dative raises advocacion of his intended service, for two reasons: 1^{mo}. Because *tutorem habenti non datur tutor*. 2^{do}. Because the bailie has behaved himself partial in this matter. The Lords, albeit they be not in use to advocate brieves, yet thought meet to stay the service, that, in respect of the novelty of the case, the cause might be first disputed before them, whether or no the brother might seek to be served tutor after the king had made a lawful tutor-dative; and, if they found the brother should be preferred, then they would remit the service to be ended before the bailies of the regality, or in case he were suspended before the commissary or other commissioners.—16th February 1628. After the cause was reasoned in the Inner-House, at large, the Lords remitted the service to the Judge-Ordinary, according to the common form of remits; but ordained the parties to have an extract of the Lords' interlocutor apart.—29th February 1628.

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1628. February 29. The LAIRD of GLEGHORN *against* His FATHER'S TENANTS.

A DONATAR to a liferent, having obtained a general declarator, and having arrested, in the rebel's tenants' hands, their mails and duties, pursues them for the same by a special declarator;—the tenants allege, That they had paid the mails to their master, before the arrestment. It was replied, Their payment before the term could not be allowed. The Lords repelled the tenants' allegiance, in respect of the reply.—[*Vide supra*, 13th January 1628.]

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1628. March 3. JANET M'MATH *against* The LAIRD of BRIGTOUN'S HEIR.

JANET M'Math being made assignee to a contract passed betwixt umquhile Mr Alexander King, on the one part, and the Lady Brigton and her son, on the other part; she being tutrix to her son, and liferentrix of the land out of which the annualrent of L.100, redeemable by L.1000, was to be paid to the said umquhile Mr Alexander;—the said Janet, assignee foresaid, obtained this contract transferred against the heirs of the Laird of Brigton; and thereupon comprises and charges for the haill sum of L.1000, and for the haill byruns since the date of the said contract. It was alleged by the defender, That she can charge for no more than she has comprised, *viz.* the sum of L.1000, and for the annualrent thereof since the comprising. The Lords sustained the charge for the haill, aye and while she be paid of her sums contained in her comprising, and annualrent thereof.

[*Idem*, Jean Ogilvie against Laird Ogilvy, 13th December 1630.]

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