

No. 180. this tutor was found liable for, might then come in consideration, to be imputed in the sums contained in the apprising.

*Stair, v. 2. p. 254.*

1674. July 29.

WALLACE *against* KENNEDY.

No. 181.

In the act of curatory it is requisite, that two of the nearest of kin, both on father's and mother's side, be called.

William Wallace, with concurrence of his curators, pursues Robert Kennedy his tutor, for count and reckoning of his means, who alleged no process; *1mo*, Because by the late act of Parliament, curators cannot pursue till they make inventory; *2do*, Because the act of curatory is null, seeing Queen Mary's act of Parliament requires "the calling of two of the nearest of kin on both sides." It was answered, That the curators knew nothing what were the pupil's means, and could make no inventory till the tutor produced the minor's writs, but offered to make the inventory before any extract; and as to the act of curatory, it could not summarily be taken away without reduction, and the late act of Parliament requires only the calling of the nearest of kin on both sides, and if the minor was pursuing alone, the Lords might authorise these curators as curators *ad lites*.

The Lords found, that two of either side ought to be called in acts of curatory, and that the late act did not determine that one of the nearest of kin on either side should be sufficient, and so did not derogate from the first act, and did only relate to the inventory; but the Lords did authorise these curators to proceed in the account, they always making inventory before extract, and renewing a formal act of curatory.

*Stair, v. 2. p. 281.*

1675. January 9.

M'INTOSH *against* FRASER.

No. 182.

A discharge granted by a curator is not sufficient without the minor's subscription.

*Stair. Dirleton.*

This case is No. 418. p. 11239. *voce* PRESCRIPTION.

1675. February.

SCRIMZEOUR *against* WEDDERBURN.

No. 183.

A tutor testamentary delaying for some time to accept, was not found liable for any thing that perished before his acceptance.

*Stair. Dirleton. Gasford.*

\* \* This case is No. 25. p. 6357. *voce* IMPLIED CONDITION.