

whereof, he did with advice of the tutor, take a disposition from the heir-male to the behoof of the pursuers, expecting nothing but his charges. No. 187.

The Lords, at the advising of the cause, found no malversation proved, and that the defunct not having obtained infeftment upon the contract to him and his heirs of the marriage, but having taken infeftment to him and his heirs-male, that the heirs of the marriage could not be served as heirs in the lands, not being *heredes investiturae*, but might have been served as heirs to their father in that clause of the contract, “providing the estate to the heirs of the marriage,” which would have been an active title, necessary for pursuing the heir-male to fulfil and denude, and that the entering of the heir-male was a necessary act; but this occurred to the Lords, that the tutor might and ought have raised an inhibition upon the contract against the heir-male, which would have prevented all hazard, and therefore found him liable for the pupil’s damage, and ordained him to obtain a disposition from his brother to the pursuers as heirs of the marriage.

Stair, v. 2. p. 493.

1677. January 23. TAILFER against SANDILANDS.

A curator having in his accounts given in an article of incident charges upon occasion of the minor’s affairs, viz. That he had met with agents and others in taverns, in relation to the pupil’s affairs, and had been at charges in drinking with them, extending to a considerable sum during the whole time of his charge; the Lords did not allow the same in the terms foresaid, but ordained him to condescend upon the particulars; and if he kept a book and diary of his disbursements, so that he might warrantably declare, that he had truly disbursed the particulars therein mentioned, they inclined to modify the same to such a sum, as they should find reasonable.

Dirleton, No. 435. p. 214.

1677. July 27.

MR. HUGH M^cALEXANDER of Dalreoch, against MR. FERGUS M^cALEXANDER, Minister.

In an action pursued at Dalreoch’s instance and his curators against Mr. Fergus M^cAlexander, who was served as tutor of law, for count and reckoning, likewise for exhibition and delivery of his whole writs, and particularly of a gift of ward and marriage of John M^cAlexander, the pursuer’s elder brother, granted to the Minister by the Lords of Exchequer; it was alleged that he was not obliged to deliver that gift, because it was granted to himself *proprio nomine*, and gave him right to the rents of the lands, aye and while the entry of a lawful heir, which

No. 188.

Actio contractaria tutela et curatele.

No. 189.

The nearest agnate, after behaving as pro-tutor, having procured a gift of the pupil’s ward and marriage, and