

No 18. whole tutors were liable *in solidum*, and as ordinarily, parties bound conjunctly and severally, may be convened conjunctly or severally, so may tutors, who as others may except upon the performance of other tutors as well as their own; neither is the case of tutors alike with cautioners, who are not liable *in solidum*; for tutors, as they are liable conjunctly and severally for the whole office, so are they convenable conjunctly and severally for the same.

THE LORDS repelled the first allegiance, and found the writs produced instructed the defender's father tutor, and not only pro-tutor; for if the testament had been produced, shewing other tutors, so that the acknowledger could not have been *tutor testamentar*, it would have made him but pro-tutor, but that not being, it instructed him tutor. As to the other point, in respect the tutor was dead, and his heir only but convened, who could not know the administration, the LORDS would not sustain process, till they were also called.

Fol. Dic. v. I. p. 133. Stair, v. I. p. 567.

1684. *March.* LORD NAPIER *against* SIR WILLIAM NICOLSON.

No 19.
Found that a minor ought call his whole tutors or curators, either at the beginning or *cum processu*.

FOUND that a minor ought to call his whole tutors or curators, either at the beginning or *cum processu*, to the effect the defences of every one may be communicated to the benefit of all; though every one may be decerned *in solidum*, as was formerly found in the Lord Pitmedden's case; albeit the contrary was lately decided in Lockhart's case against Mr John Ellies, No 13. p. 2183: where the tutor called was only allowed to intimate to the rest of the tutors who were not called. This was adhered to as to the Representatives of dead tutors; December 2. 1684.: and the like was decided January 1685, Dalgarno *contra* Henderson. See TUTOR and PUPIL.

Fol. Dic. v. I. p. 133. Harcarse, (TUTORS and CURATORS.) No 981. p. 277.

1705. *June 23.* HELEN and MARGAET MURRAYS, Children to the deceased Patrick Murray Merchant in Edinburgh, *against* JAMES MURRAY of Deuchar.

No 20.
Action of count and reckoning was sustained against the accepting tutors nominated, without calling the rest who did not accept nor act.

JAMES MURRAY of Deuchar, and Mr William Monipenny advocate, having been the only accepting tutors nominate to Helen and Margaret Murrays;— THE LORDS sustained action of count and reckoning at their instance, against the said James Murray, and the Representatives of Mr William Monipenny, without necessity to call the rest of the tutors named, who never accepted nor acted.

Fol. Dic. v. I. p. 133. Forbes, p. 10.