

1731. February. PITCAIRN against CURATORS.

No. 262.

Found, in terms of the act 8th Parliament 1696, That a father having named curators to his son, he he could not, in prejudice of the father's nomination, elect curators to himself.—See APPENDIX.

*Fol. Dic. v. 2. p. 478.*

1732. February 17. COCHRAN against COCHRAN.

No. 263.

In a son's contract of marriage, the father disposed to him several acres of ground. After the son's decease, the children's tutor, finding that one of these acres did not belong to the disponer himself, but to the disponer's wife, grandmother to the pupils, solicited a gratuitous disposition of the same from her. It was found, That the right acquired by the tutor to the acre of land in question accresced to the pupil, it being pleaded, That there ought no difference to be made in this case betwixt onerous and gratuitous acquisition; *Imo*, Because every step taken by a tutor touching his pupil's estate must be presumed done with a view to the interest of his pupil; *2do*, Because, were this distinction admitted, the pupil would have no security, the tutor having it generally in his power to frame the narrative of a deed conceived in his own favours.—See APPENDIX.

*Fol. Dic. v. 2. p. 492.*

1735. January 31. GRAHAM against EARL of MARCH.

No. 264.

A tutor having disposed an heritable bond, wherein his pupil was infest, to a purchaser of the estate, upon payment, in a reduction of the said disposition against the purchaser, the tutor having died insolvent, it was pretty obvious, That the disposition to the purchaser, who had an interest to disencumber the estate, was the same with a renunciation: But then it was questioned, Whether a tutor can at all renounce an heritable bond, or the debtor be in safety to pay, without having the decree of a Judge for his warrant, or at least seeing to the application of the money? It was pleaded for the pursuer, as fixed law, That a tutor cannot assign his pupil's bonds, whether heritable or moveable, nor sell his land, unless *causa cognita* upon a decree of a Judge; and such restraints would be to exceeding little purpose, if the tutor were at liberty to uplift and squander the whole debts belonging to his pupil; and to fortify this, the authority of the civil law was quoted; §. 2. Institut. Quib. alien. lic. vel non, L. 25. & 27. C. Administr. Tut.; and Sir George M'Kenzie, Tit. TUTORS AND CURATORS, § 18. Answered, The inter-