1777. *February* 21. SINCLAIR *against* SUTHERLAND.

IN the case of the children of Sir John Sinclair of Mey, all the tutors nominate declined, except the widow and her brother, Captain James Sutherland, who accepted. Soon after, the widow married, whereby the Captain was left sole tutor. The nomination was to the persons named, or a major part of them who should accept, and the survivor or survivors of them; the widow, during her viduity, being always one, *et sine qua non.* The Lords found that the tutory subsisted in the Captain.

Tutors nominate are the favourites of the law; and, in this case, it appeared to be the intention of the father, that the tutory should subsist not only in one survivor, but in one acceptor: The reason is the same. It would have been different, had it appeared to have been the father's intention that at least two should act, as in the case observed by Bruce, 17th February 1715.

1778. *March* 10. WELSH *against* WELSH.

ACTIO suspecti tutoris, by the civil law, was *actio popularis;* but, by the Scotch law, it is *actio popularis* only to any of the blood relations, but no farther. See Fount. *29th March* 1682, *Trotter;* see also Lord Stair, *B.* 1, *tit.* 6, § 26; Bank. *B.* 1, *tit.* 7, § 34.

James Cornfoot died, leaving a beneficial tack, which had 40 years to run, to his only child, Nathan, who, after pupillarity, chose his mother and her second husband, James Welsh, as his curators,* and John Welsh, brother to James, was taken as cautioner.

But James's affairs having gone into disorder, and he having become a notour bankrupt, John, libelling on this, and on the mismanagement of the curators, brought an action to have it found that he was free of his caution, not only in time coming but from the date of a protest he had taken against the minor and his nearest of kin, requiring them to bring an action for removing the curators; which action he now brought, and libelled accordingly. The nearest of kin lying by, and declining to meddle, compearance was made before the Lord Hailes, Ordinary, both for the curators and minors;† they consented to the first, but denied the competency of the last: and his Lordship having taken the point to report, they failed to give in any information; so the Lords took it up *ex parte.* In the first place, they unanimously freed the cautioner from his caution, from the date of the protest, and, in respect thereof, they ordained the curators to find new caution within ten days, with certification, otherways that they would remove them.

* This was plainly irregular: no person, under *cura*, can be curator to another.

† It is thought, that where a minor in any action appears incidentally to be in danger, the Lords may, and ought to interpose for his defence.

And they having failed to do so, "the Lords removed the curators from their office of curatory, as suspect, and found both minor and curators, conjunctly and severally, liable to the pursuer in expenses, reserving to the minor, for such part as he might pay thereof, relief against the curators."

1780. *June* 23. MISS GRAHAM of GARTMORE *against* Her CURATORS.

WILLIAM Graham of Gartmore named certain persons to be tutors and curators to his three daughters, with power to direct their education, and other usual powers: His wife, Mrs Margaret Porterfield, mother to the children, was one; and she intending to marry after Mr Graham's death, a gentleman, a merchant in Lisbon, her eldest daughter, who by this time was a few days above 12 years old, resolved to go and live with her. The tutors interposed by bill of suspension, and craved an interdict, prohibiting her to go out of Scotland till the question was tried, *viz.* how far a young lady under curatory such as this, a few days only above 12 years of age, had power to choose her place of residence. The bill was past, and an interdict granted; but, on report of Lord Braxfield, the Lords repelled the reasons of suspension, and removed the interdict. They were next to unanimous; but several of them regretted that, in females, pupillarity ended so early. They thought the special clause empowering the curators to direct the education of the young ladies made no difference, and they asked, where could a daughter stay more properly than with a virtuous mother?

WADSET.

1772. EDMONSTONE *against* TWEEDDALE.

TWEEDDALE, upon a narrative of his being debtor to Edmonstone in the sum of L.49 sterling; therefore, for payment of said sum and annualrents, he sold to Edmonstone, his heirs and assignees, heritably, but under redemption, the lands of , redeemable from the said James Edmonstone, and his foresaids, by payment of the foresaid sum. The disposition contained an assignation to the rents in all time thereafter until payment of the sums before mentioned; and it did not limit the reversion to any term. After the possessing the subject for some time, Edmonstone pursued Tweeddale for payment, and insisted that the deed was a wadset, which entitled the creditor to redemand his money,—a sale under a perpetual reversion being an absurdity in terms, and truly resolving into a proper wadset, being impossible to be con-