

1785. *November 23.* DUNCAN JOHNSTON *against* MARGARET CLERK.

TUTOR AND PUPIL.

A guardian named by a father to his natural child, entitled to demand the custody of the child from a person to whom the father had committed it.

[*Fac. Coll. IX.* 369 ; *Dict.* 16,374.]

BRAXFIELD. If the father of a natural child maintains him, he has a right to fix the place of the child's residence ; and, if the father, so also a guardian named by the father. I hesitate in determining whether such a father may not have power to name something of the nature of a tutor.

JUSTICE-CLERK. It is admitted that the child was sent over from Jamaica to Margaret Clerk ; the father certainly could have recalled the child : the naming Johnston guardian implies a like power in him.

GARDENSTON. The father of a natural child, providing for it, may name an administrator, if not a tutor to it.

PRESIDENT. I am clearly of opinion that a man cannot, in legal words, name a *tutor* to a natural child, but still he may name a *guardian* : for there is a natural, although not a civil relation between the father and the child.

On the 23d November 1785, "The Lords decerned, in the terms of the libel, the pursuer finding caution, for L.500 sterling, not to remove the child out of the jurisdiction of the Court ;" adhering to the interlocutor of Lord Hailes.

*Act. W. Nairne. Alt. H. Erskine.*

*N. B.* On recollection, I had some doubt as to the propriety of demanding caution ; and the President told me he had the same doubt. But the pursuer did not insist on the objection.

1786. *January 24.* ROBERT GORDON *against* ANDREW MELLIS.

PRISONER—ACT OF SEDERUNT 1671.

The temporary enlargement of a prisoner on a *meditatione fugæ* warrant, falls not under it.

[*Faculty Collection, IX.* 382 ; *Dictionary,* 11,756.]

ESK GROVE. The Act of Sederunt does not apply to this case, which respects an imprisonment on a warrant till caution should be found *judicio sisti*, and not