

No. 68. this pursuer, since the decease of his brother, father to the pupil, had contracted with his other brother, and received from him a disposition, assignation, and translation, of all right that he could have or succeed to by decease of his said umquhile brother, or by the decease of this pupil, his son, either heritage or moveables; and so being, by that means, nearest to succeed, and having made *factum de futura viventi successione*, he was *suspectus* tutor, at the least could not have the custody of the pupil's person. Which exception and reply were found relevant.

Haddington MS. No. 972.

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1610. March 7. GORDON against GORDON.

No. 69.

In an action of reduction pursued by George Gordon of Barskeoch, for reduction of a hornsng used against Alexander Gordon, his father's brother, to whom he was heir, who was denounced to Patrick M'Ghie of Lagg, against whom and the said umquhile Alexander, as curator, Patrick Murdo had obtained a decree of removing from the lands of Duntres, and thereafter a decree of violent profits; it was found, that the horning executed against the curator was null, upon this reason, that the decree of violent profits was obtained against the minor himself, *et hoc modo*, that he occupied these lands himself, and that the curator, albeit *nominatim* summoned, yet was not proved to be curator, *tempore sententiæ*, by production of the act of curatory, and that the office should be onerous to the curator.

Kerse MS. fol. 149.

\* \* Haddington reports this case:

A curator may not be put to the horn upon charges raised upon a decree of violent profits given against his minor, upon probation of the minor's intromission; because the curator, being only charged for his interest, should not be denounced, but only the minor. But a tutor being decerned with his minor, may lawfully be denounced.

Haddington MS. v. 2. No. 1850.

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1610. June 26. FOSTER against FOSTER.

No. 70.

The father, as lawful administrator to his daughter, discharging his annual-rent of 30 bolls victual yearly, for divers years, the same is not lawful, unless the daughter have given the discharge, she being past the age of tutory, because the father, as lawful administrator, is but in place of a curator, who may not discharge the minor's debts, but only consent to her discharge.

Haddington MS. v. 2. No. 1916.