

warrant in the suspension for to summon his tutors and curators, without whom had been cited, he *alleged* he could not be compelled to reason upon that suspension; which allegiance was repelled, seeing the suspenders had summoned the *Ld. Lorn* himself, to whom the command of the letters, and charges produced by him, ordained the payment to be made, and bore no mention of his tutors and curators, and so they summoned him, to whom the command of the letters craved payment to be made; and albeit it was *replied*, that a minor may make his condition better without his curators, yet no legal process can be led against him, without his curators were cited, that also was repelled.

Act. *Hope.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. l. p. 132. Durie, p. 283.*1628. *July 12.*BENNET *against* TURNBULL.

In a removing, Rachel Bennet *contra* Turnbull, the defender being minor, the LORDS found no necessity to warn the tutors and curators by the precept of warning, they being summoned by the principal summons of removing, for the precept is not a judicial act; and also the defender defending upon a personal contract made by the pursuer's author, anent the borrowing of money from the defender's father, to whom he was heir, for the which he was bound, to give the defender's father and his heirs security of the lands libelled, and disponed the same by the said contract, (no other real right following) to be bruiked without any duty to be paid therefor, in place of the annualrent of his money, ay and while the lands were redeemed; by payment of the principal sum, according whereto he and his father have been in continual possession of the lands these many years bypast; which security being of the nature of a tack, ought to defend him; this exception was repelled against this pursuer, who was a singular successor in the right of the lands.

Act. *Taylor.*Alt. *Belshes.*Clerk, *Hay.**Fol. Dic. v. 1. p. 132. Durie, p. 388.*1629. *December 17.*L. CAIRNOUSSIE *against* L. TECHMURIE.

CAIRNOUSSIE after comprising of lands from L. Philorth, the legal being expired, pursuing a declarator of redemption against Techmurie, to whom the land was wadset before the comprising, by the forbears of him from whom the same was comprised, under reversion; it was found, That the heir of him from whom it was comprised, being publicly infeft in the same lands, needed not to be summoned in this redemption, seeing in effect he was author to the compriser; for having the right of his conventional reversion established in his

No 10

and not against his tutors and curators; neither was there any warrant in the suspension to summon them.

No 11.

Tutors and curators need not be certified in extra-judicial acts, such as warnings, but must be called in summonses of removing following thereon.

No 12.

In a declarator of redemption against a minor, the Lords found, that the tutors and curators need not generally be warned in the instrument of pre-

No 12.
monition,
since they
were specially
and *nominatim*
warned.

person, by that comprising, which being a judicial assignation, it behoved to be alike, as if the debtor had made him assignee to that reversion, *quo casu* he needed not to have summoned his cedent. *Item*, It was found, That the redemption being against a minor, the tutors and curators needed not generally to be warned in the instrument of premonition, his tutors being specially warned *nominatim*; but it was found, that the pursuer ought to instruct, that he was tutor, and prove the same *cum processu*.

Act. *Laurie, Davidson, et Baird.*

Alt. *Nicolson et Hay.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 133. Durie, p. 475.

* * See This case by Hope, *voce* WADSET.

No 12.
In a removing
against a fa-
ther and his
son, the son
being minor,
and the fa-
ther summon-
ed as admini-
strator to him,
this was found
sufficient, tho'
tutors and cu-
rators were
neither gene-
rally nor spe-
cially sum-
moned, and
tho' he had
other cura-
tors.

1630. July 17.

L. LIE *against* PORTEOUS of Hawk-shaw.

IN a removing against the father and the son, the son being minor, and his father summoned as administrator to him, the summons was sustained, albeit the tutors nor curators were neither generally, nor specially summoned, which was not found necessary, albeit the son had other curators given to him than his father, and that his father was not one of them; and the warning being quarrelled, because the time of the execution thereof, the party was out of the country, and he was neither warned at the ground of the lands, nor at the parish-kirk, upon sixty days; this allegiance was repelled, and the warning sustained, because he was warned at the ground of the lands, and the parish-kirk, upon forty days: and he was warned also at the market cross of Edinburgh, and pier and shore of Leith upon sixty days, which was found to be sufficient, and that he needed not to be warned upon sixty days, at the ground, nor parish-kirk.

July 20.—ONE compearing, and defending against the said removing, by virtue of a disposition of the liferent made by that rebel, whose liferent was sought, and possession conform thereto, and which was acquired from the rebel, for oneous causes of a just debt; THE LORDS repelled the allegiance, and sustained the donatar's right, because when this party disponded his liferent to this excipient, he was then rebel; and albeit he was not then rebel year and day, whereby his liferent was acquired at that time to his superior, yet he being then rebel, and continuing in that rebellion, which was *in cursu*, and from the which the rebel was not relaxed within year and day, how soon the year was expired, made the liferent of these lands to fall to the superior, wherein he was not prejudged by the said preceding disposition, made before the year expired, being made as said is, after he was at the horn, and the same being *in cursu*. See ESCHEAT.

Act. —.

Alt. *Scot.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 132. Durie, p. 532.