

1636. *March 8.* STEWART *against* HENDERSON.

No. 132.

A brieve of tutory being directed out of the Chancery to any Judge in general, may be served like a general brieve of mortancestry before any Judge, though neither tutor nor pupil are within his jurisdiction.

Durie.

* * * This case is No. 2. p. 9585. *voce* PACTUM PRIVATUM.

1636. *March 17.* WEIR *against* ARNOT.

No. 133.

An assignee constituted by a tutor to a bond payable to himself and successors or assignees, but mentioning the money lent upon the bond to have been his pupil's money, has right to pursue for, and discharge such a bond, without concurrence of the pupil, but ought to give security to indemnify the debtor at the pupil's hands.

Durie.

* * * This case is No. 307. p. 11629. *voce* PRESUMPTION.

1642. *February.* SCOTSTARVET, &c. *against* The EARL of BUCCLEUGH.

No. 134.

The Lords refused to grant to a tutor a modification for his pains, over and above expenses.

Harden, Clerkingtone, and Scotstarvet, curators to the Earl, pursue him to see and hear them liberated of the office of curatory, because the Earl promised to take and follow their advice in his business, but does not seek their advice, and follows it not, but is guided by other curators and persons not so acquainted with his estate. Answered, No ground in law for liberating them of their office. Replied, The minor has, without their consent, done sundry deeds, with consent of other curators, to his great lesion; and given in a condescence on the deeds. Answered, The act of curatory chooses the hail or any two of the curators by whose consent he may do any thing, and the not consenters are not bound for deeds to be done without their consent. The Lords find accordingly. The pursuers urge another alternative of the conclusion of their summons, viz. that, conform to the provision in the act of curatory, they be not liable but for such deeds as they consent to, and that otherwise they may be free of omission and commission. The Lords interpone their authority to the quality of the act, and grant the conclusion. The pursuers urged the first alternative to be liberated of the office of curatory. The defender, in respect of the curators' desire to be liberated, sought by the summons, and their unwillingness to exercise the charge,