

Tutors & Curators may be given at the age of twenty one
in ground of necessity that the person named must be 6 or 8 to
the Minor.

Age Act. 52. par. 7. J. 3. Nor are Minors capable to be Tutors, tho they have
cured veniam etatis, a Dispensation as to their Age from the Sov^{erign}. Because
the compliment of such a Dispensation renders them nothing ^{wiser or} more qualified than
if they had it not, and is intended only to capacitate the Minor to act for himself, and
not for others l. 2. pr. l. ult. C. de his qui ven. at. Hope Tutors.

Q. If Tutors Testamentary or Tutore, be qualified for the Office after their Age of
21; or if the same Age be required in them as in Tutors of Law? Ratio dubitandi.
A Woman, who cannot be served Tutrix of Law may be admitted Tutrix Tutore.
And a Minor may be named a Tutor, whose Nomination takes Effect at his Ma-
jority.

Fools, furious, and interdicted persons Ang. 9. 3. Inst. de curat. l. 1. pr. ff. de curat.
fur. Those who are dumb & Blind l. 1. §. 2. ff. de tutor. l. un. C. qui morbo l. 3. C.
qui dare tut. or under any habitual Malady which disables them from looking
after their own Concerns cannot be called to the Office of Tutor or Curator.

Persons declared infamous l. 17. §. 1. ff. de testam. tut. Papists. Act. of Parli. Sept.
i. Ch. 2. and Rebels at the Horn for civil Debt till they be relaxed are disqualified
to be Tutors or Curators. Nor is Caution sufficient to capacitate an Outlaw at the Horn
to be admitted to the Charge by a judicial Act. 4 July 1629 Corbat of Ardrill
contra his nearest of Kin Spotswood pr. Tutors and Curators. A Tutor who gives
Money, or makes Interest to get himself named is unworthy of the Office l. 2. i. §.
ult. ff. de tut. & Cur. dat. Women may be Tutors Nominate, ^{as may be Curators} but cannot be ser-
ved as Tutors of Law. Stewart's Answers to Dirlot. Doubts. tit. Tutors.

By the civil Law Soldiers actually in the Service were incapable to be Tutors l. 4. C.
qui dare tut. And no person could be Tutor to his Debtor or Creditor Nov. 72. Cap. 1. 2.
Nov. 99 pr. ff. But in Scotland Soldiers are capable of the Office. And not only
may a Pupil have his Debtor or Creditor for his Tutor: but also a Tutor may law-
fully pursue during his Office for a Debt given up by the Pupil's Father, as due to
the Tutor Hope Tutors. Tho if he commence Action against the Pupil he can never
be Tutor to him thereafter, Hope ibid. By the Custom of France also, those who are
Creditors or Debtors to a Minor, are not upon that Account incapable of being their
Tutors, Les Loix Civiles &c. lomi. par. 1. ho. 2. tit. 1. Sect. 7. pr. The Safety of Minors
being provided for sufficiently by ordering an Inventory of their Goods to be made,
and to be lodged in Court, which preserves the Title of their Claims or Defences a-
gainst their Tutors, and by appointing them a Curator or substitute Tutor, to the Law-
suit.

Tutory and Curatory among the Romans were publick Offices that could not be declined
except upon certain grounds of Exemption authorized by Law, but ^{in Scotland} they are not
with us those qualified for the Office, are left free to accept or refuse the same, Tutory
and Curatory not being publick Offices here. And according to the Usage in England,
no one is put upon such Office against his Will. Covell Inst. lib. 1. tit. 25.

By the civil Law, Tutors or Curators were liable from the very first day knew
of the Office being put upon them l. 1. §. 1. l. ult. ff. de admin. & peric. tut. But
in

Persons named by a Tutor in his Legacy must show to be Tutors and Curators to his Children, may accept the office of Tutor, and Curator

How Testamentary only be left from the date of its completion
and by a Legacy be left to a Tutor he must accept the office
before the Legacy is put upon him, otherwise it is void

in Scotland Tutors or Curators are liable as such, only from the time of their
Acceptance. It being inconsistent with the Law, that one should be tied to the Duty of
an Office before he have it, which would be filius ante patrem; and he hath it not
till he accept; the Office of Tutory, not being minus publicum et necessarium with us.
Yea a Tutor Testamentary having neglected to accept till 3 years after his being
named; was found liable only from the time of his Acceptance, and not for any-
thing lost before 19 July 1670 & 2 February 1675 Scrimgeour contra Wedder-
burn. But if a Legacy be left to a Tutor or Curator nominated, he must either ac-
cept the Office or want the Legacy; whether the Bequest was made in Contemplation
of his Acceptance, or abstractly without any such View, 2 February 1675
Scrimgeour contra Wedderburn 16 June 1675 Thomson and Haliburton contra
Dyalovic and Watson Stewart's Answers to Dirlot. Doubts tit. Tutors which Distinction
Mr Bruce (Tutor's Guide part. 1. tit. 1. n. 61. 62. 63.) has no Ground for circulating,
So that atleast our Custom doth not compell a Tutor or Curator directly to accept the Of-
fice: yet he may be urged to do it causative or at the Requisition. Again, tho he can-
not be obliged peremptorily to accept, he may be pursued alternatively either to ac-
cept or renounce.

Acceptance is either express, when the Tutor or Curator appears, and formally embraces
the Office; or it is tacit, and presumed from some Act implying the same, as subscrib-
ing Writs for the Pupil as Tutor, or with the Minor as Curator. Persons in whose
Name Actions were carried on, or Defences made and Sentence given as Tutors, without
their Warrant or Knowledge; are at Liberty to renounce the Office so long as they
have not meddled with the Minor's Effects 19 January 1630 Baird and Forrest contra
Chalmers. A Tutor Testamentary was found not to have accepted or behaved as Tu-
tor, by concurring with other Friends in taking Writs out of the Charter Chest,
and continuing to possess his Coal and Land-rent upon Infestment for Security
of Money owing to the Tutor after the Sum was satisfied; unless he had known
of the Nomination before these Actings 19 July 1670 Beaton contra Beaton.
A Tutor Testamentary to whom a considerable Legacy was left in the Testament
was found not to have accepted the Office, by inventoring the Writs of the deceased,
and confirming himself Executor qua Legatary 2 February 1675 Scrimgeour
contra Wedderburn. An Act of Curatory or Tutory, without the Warrant thereof,
will not prove the Tutor or Curator's Acceptance of the Office. Nor was Acceptance
of a Tutory found instructed by a confirmed Testament bearing, that such a Man
compeared judicially accepted and made Faith, without production of the principal
Writ subscribed by him, or some Adminicles to make it appear, tho 37 years were
elapsed since the Confirmation 31 January 1665 Kirkton contra L. Hundhill seeing
Acts of inferior Courts which are but the Abortion of the Clerk, prove not in any
thing without a Warrant, except in the ordinary points of form of Process, and the
Acceptance of Tutory was no ordinary Act of Fact. Neither was a Discharge as Tutor
Testamentary sustained, to make the Grantor liable as such; in Regard the Testament
love him only to be overseer; et falta Designatio non nocet 10 June 1665 Swyn-
ton contra Ntman.

But