

(1) Acceptance of tutors from which certain times inferred - (2) Tutor by a tutor is equal to actual tutor - (3) What must be accepted to make nomination valid?

But a writ under a Man's own Hand designing him Tutor Testamentary, which he subscribed as such, was found to oblige him to condescend as Tutor, without Necessity of producing the Testament, unless it were proved that he was not Tutor 2 December 1668. Scaton contra Scaton. A Tutor's grandsons, to uplift the Pupils Rents, is understood to be actual Intromission on the Tutor's part. Acceptance of the Office of Curator was inferred, from subscribing Writs with the Minor as such: altho these Decrees were revocable by the Conception, and in Effect donatio mortis causa, which requires no authorizing by Consent of Curators 10 November 1671 Cass contra Elies. A Tutor Nominatè was found to have accepted the Office of Tutor by signing Inventories of the Pupils Means, and judicially producing them by a Procurator 20 January 1714 Watson contra Watson. Albeit, was alleged that signing of Inventories was ^{only} a preliminary Step, to discover the Pupils Condition and Hazard of the Office before the Tutor submit to the Burden thereof and no Decree of Administration: as making Inventories by an Executor without a subsequent Confirmation, doth not make him liable quatenus; and the signing Inventories in Order to enter Heir cum Beneficio, is not reckoned a sufficient indication of animus adiuvandi, nor doth it infer Behaviour: The Inventories might have been signed with a protestation, that it should not import Acceptance: Ergo contra the signing should not bind unless Acceptance followed. In respect it was answered, that making Inventories is the best Evidence of voluntary Acceptance for a Tutor doing what Law specially requires of him in that Character is understood to act as such. There is no Contingency betwixt this Case, and the making of Inventories by Executors or by Heirs, whose Titles are not complete till Confirmation or a Service be expedite: for after giving in subscribed Inventories by a Tutor Nominatè, nothing remains to complete the Nomination; the subsequent Acts of Administration being the Duty of a Tutor established in his Office by giving up signed Inventories.

If several Tutors or Curators be named jointly, all must accept, or if so many be appointed a Quorum, that Quorum must accept otherwise the Nomination is void 25 January 1672 Ramsay contra Maxwell. Where they are named without the Word jointly or any Quorum express, the major Part must accept, to make the Nomination subsist. If more be named jointly and severally, the Nomination is good if any one accept. Where a Linequis non is named, and he refuses to accept, the Nomination falls.

Sect. 2.

The Dutys of Tutors and Curators; and what they, and their Factors are liable to.

Some of the Dutys of Tutors and Curators are previous to their meddling with the Minor's Fortune; others respect the Administration itself.

Tutors should (1) make out a true Inventory (2) make out a true Inventory

The preliminary Dutys.

Tutors Duties, and Curators not named by the Father in his Liege poustie, might, before they enter upon the Administration, to make Faith, and find Surety to act to the Minor's Advantage. But a person being decessed Curator, without making Faith or giving Caution, and acting afterward by subscribing Writs with the Minor as such, was found liable as Curator passivè 10 November 1671 Cass contra Elies. For albeit the not making Faith and finding Caution might have been a ground for the Minor or other Curators to exclude him ad agenda; yet he by acting Curator nomine, made himself Curator passivè: as the Service of an Heir without retouring, affords a passivè but no active Title. The Lords did indeed once absolve the Heir of a Tutor Dutie, from being liable for his Predecessor's Omissions; upon the Account that the Tutor had only accepted and taken the Oath de fidei; without finding Caution: and found, that as without finding Caution he could not have pursued the Minors Debtors, neither could the Minor pursue him 26 January 1620 Commissary of Dunheid contra. Abercrombie. But that Decision, as the Lord Dury observes, was hard: because a Person's Neglect of his Duty, to give Caution, should not profit him Testamentary Tutors, and Curators named by the Father in his Liege poustie, are neither put to make Faith, nor to find Caution: and a Tutor of Law does only find Caution.

All Tutors and Curators must compile an Inventory that is a public Instrument containing a particular and exact Description of all the Minors Writs and Estate. 'Tis called an Inventory from the Latine inventio: because all that belongs to the Minor should be found therein described. They are obliged only to set down in this Inventory, the Minors Lands by the Designation of Barony or Tenendrie according to the Nature thereof, and are not to narrate the whole Writs and Securities of these Lands, which might prospale the Defects of the Minor's Rights: but should describe Bonds and other Securities of the Personal Estate 19 July 1600 Quare proposed for the M. Montrose. Two Friends on the Father's side, and as many on the Mother's are sufficient, for the making of Inventories by Tutors or Curators. Mc Kenzie Observ. Art. 2. Sec. 3. Par. 2. l. 2. Cum pluralis elocutio duorum numerus contenta sit l. 12. ff. de testib. There should be three Doubles of the Inventories subscribed by all the Tutors or Curators; one to be kept by them, another by the Father's Friends; and a third by the Mother's. These three Duplicates must be produced before the Judge ordinary where the Minor resides, and subscribed by the Clerk of Court, that they may not be altered thereafter. An Act is to be extended upon the Production, mentioning the Names of the Subscribers, and those with whom the Inventories were left: If the Minors Friends concur not willingly to make up the Inventories, the Tutors or Curators may summon them before the Judge ordinary to do it: and upon their not appearing