

Annual expectation how far complete... (1) to be... by...
is not... (2) Curators ought to prevent the
minor from... by...

to receive Rappals, grant. Jacks, Charlers or Seijons: but to find Diligence
against Tutors and their Estates for payment of liquid Sums, they must
specially decerne to make for the coming so much of the Pupils Rents and
as is in their Hands for satisfying his Debt in whole or in part. Stat. lib. 1. tit. 6.
§. 20. Because nonini officium suum, quid epus cum quo contraxerit, non
etiam sui commodi causa suscepit, debet esse damnosum l. 61. §. 5. ff. de
iur. iud. Sit James Stewart Answers to Dvlet. Doubts tit. Tutors of Minors
that a Tutor may for his Pupils Debt, be charged with glooming either
for his Interest only, or upon a defect against the pupil and him for payme
and that in either case the Tutors ~~shall~~ will fall because of contumacy if he
suffer himself to be denounced, and do not suspend. For that eo ipso that he is
tho, he is liable ex quasi contractu either to pay the Debt or shew that he cannot pay
it.

But Curators are not, by consenting to their Minor's Deed, bound as cautioners
for the Minor, or to warrant that Deed, but only to give their Consent 26 Jun
1624 Drummond contra L. Cunninghamhead.

In France no Law-Suit ought to be commenced for a Minor, nor any brought
against him defended, without Advice of persons of whom he is to take
Counsel in the Matter by whose Advice a Tutor ought to govern himself
tising the Debtors of the Minor. Les Loix Civiles &c. tom. 1. part. 1. liv. 2. tit.
Sect. 3. Art. 11.

A Tutor or Curator's Duty in Relation to the Minor's Fortune and Affairs
may be summ'd up in these words of Seneca (Consolat. ad Helviam cap 14) *Ut
iis laborat tanquam in suis, atque interim iis abstinere tanquam alienis* That
he as carefully manage the Minor's Estate as if it were his own, and at the same
time forbear impropriating or imbezelling it as belonging to another.
By the Civil Law, it is the Duty of Tutors to advise their Pupils to chuse Cur-
tors, after Pupilarity is expired l. 5. §. 5. ff. de admir. & peric. tut. But our Law
seems to lay no such Tie upon Tutors. And Curators are to advise the Minor
under their Inspection on all Occasions what is proper to be done. Tutors or Curators
are not to suffer the Minor, to uplift his own Rents, least he may spend or
squander them away. Thus Curators of a Minor who suffered himself to im-
mix himself in his own Affairs and intromitt with his Rents during the
Office, were found accountable for the whole Rents, except in so far as they can
prove that he actually intromittet: albeit the Minor had rebored and renewed his
Discharges to the Tenants, and after Majority filled Accounts with them as to
ceeding Rents. By the Civil Law, if one of several Tutors or Curators who are
not obliged to find Caution, incline to have the sole Administration, and for
that End offer Security to the rest for the Minor's Indemnity; they must
either yield the Administration to him, or find Surety in such Manner §. 1.
Inst. de satis dat. But with us a Tutor or Curator displeas'd with the Administra-
on of his Tutor or Curator, who ^{advocate} advocate him or get without acquainting
him, hath no Interest to compell them to warrant him against their Debtors,
to resign the Management to him, upon Caution to warrant them. All he can do
such a Case is to get them removed if they malverfe, or if their Cautioners become
insolvent

(1) a Tutor may insist on the other...
a Diligence... by... of the...
164

insolvent, or die without any to represent them, to cause them renew their
Surety 27 June 1672 Shirling contra Tutor of yeoman. For tho there be a cer-
tain Tutorum constitute for acting, or authorizing, all are liable for what is
wrong done or left undone: and therefore concerned to procure the unfit or
unfaithfull Administrator remove, and a Redification of what is amiss.
For making Debts due to the Minor effectually, a Tutor or Curator is by the Civil
Law regulariter liable for a light Fault l. 39. ff. de admir. & peric. tut. l. 1. ff.
de tutel. & rat. distrab. l. 7. C. arbit. tut. l. 23. ff. de reg. iur. Sometimes ten-
etur de levisima culpa l. 53. §. 3. ff. de iur. Sometimes de lata culpa l. 7. §.
2. ff. de admir. et peric. tut. Our Law in the Opinion of the Lord. Stair (Inst.
lib. 1. tit. 6. §. 21.) is satisfied in Testamentary Tutors with such Diligence

(2) in their Minor's Affairs, as they use in their own: and requires from Tutors
of Law or Tutor's Talies, not only the Diligence used in their own Affairs, but
also the ordinary Diligence of provident Men, that careful Masters of Fam-
lies take of their own Affairs. For that Tutors Testamentary who sought not
the Office, should be more tenderly dealt with, and allowed a greater Latitude
than those that offer their Service, and court the Office. But Sir George Mc-
kenzie (Inst. lib. 1. tit. 7. §. 19) is positive, that all Tutors and Curators, are li-
able to do exact Diligence. That is they should use Reprohibition, Pounding, or Arrest-
ment according as the Subject of the Debtor's Estate is affectable by Diligence

If there be nothing to adjuage points or arrest, personal Execution by Storme
and Caption is to be used. 30 June 9 July 1667 Hewin contra Boyd. So that
in different Cases different kinds of Diligence are requisite. Tho' at the same
Time a Tutor or Curator must not answer for the bare Success of what has been
rightly managed l. 3. §. 7. ff. de contrar. tut. et ut. act. Nor for Accidents.
l. 4. C. de peric. tut. Nor are Tutors or Curators bound to do Diligence, ex-
cept where the Minor may probably find his Account therein by recover-
ing the Debt. Stair Inst. lib. 1. tit. 6. §. 22. Because Minors should not be
engaged, nor their Money laid out or mispent in unprofitable or fruitless Law-
Suits or Diligences against Debtors who are not solvent. Thus a Tutor was not
found liable for omitting to use personal or real Diligence against his Pup-
ils insufficient Debtor or his Estate, found liable for the Debt: unless it
were made appear, that the Debt was recoverable by Diligence within the
Tutory, and the Debtor's Condition turned worse since then 6 February
1623 Watson contra Watson 2 July 1620 Hamilton contra Hamilton.

Again, the Tutors or Curators are liable if any of the Minor's Tenants are
suffered to break or turn Bankrupt with his Effects, which ordinary pru-
dent Foresight might have prevented: yet the Loss by sudden Breacking
of a Pupils Tenant is not chargeable upon his Tutor 9 July 1667
Steven contra Boyd. Because, are not bound to raise their Pupils Money
out of the Hands of a solvent Debtor, unless the Condition of principal
or Cautioner become worse: and any declining or falling in the Circum-
stances of one that gos aside all of a sudden cannot be perceived.

Regularly