

1 Tutor liable in solidum - Tutor liable for omissions as well as for commissions - This obligation on the Tutor can be executed only by the Minor & his assigns & he does not pass to assignees of the Tutor - but when a Tutor is found liable only for commissions

Regularly Tutors and Curators are accountable in Solidum to the Minor -
- Nov 22 February 1634 Davidson contra jacob jund. ii February 1630 Guthrie contra Guthrie 9 March 1684 Lochart contra Ellies. Tho a Quorum of them be settled in the Nomination or Election, and tho they divide the Office among themselves by assigning to every one his particular Province. But if it was divided by a Testator or by a Judge, every one is liable for his own Share only l. 2. C. de divid. tut. Tho Tutors and Curators, altho they be liable in Solidum to the Minor, are bound to relieve one another pro rata or ratably ii February 1630 Guthrie contra Guthrie.

They must regularly answer to the Minor both for Intromissions and Omissions. Tho Curators were found liable for sums resting to the Minor by Bonds, which were lost through Negligence during the Tutorship, without putting the Minor to prove that the Curators knew of these Bonds: for they being produced by the Minor were presumed to have been in the Charter Chest; unless the Curators prove by Witnesses that they made Search there and found them not, nor any Inventories mentioning them, or where they were, 24 June 1680 Cleland contra L. Lamington. A Tutor was accountable for the Rents of Lands the Pupils Father died infeft in and possess of, tho the Pupil was not infeft, and the Tutor never intromitted 28 January 1628 Com. Missary of Dunhead contra Abercrombie. Because the Tutor's Pupil's not being infeft and the Tutor's not meddling, was his own Fault and Omission: for he ought to have infeft his Pupil in the Lands, and intromitted with the Rents, or done Diligence, and shew that he was lawfully debarred. A Father having by his Contract of Marriage provided for his Children of the Marriage to his Estate, and taken no Infeftment on the Contract with their Mother; but infeft himself and his Heir Male, and the Father's Brother having entered Heir's Male to him in that Estate, and disposed the same to a third Person, whereby the Children of the Marriage were excluded from it: then Tutor was made liable for their Damages, which he might have prevented by using Inhibition against the Heir Male; and ordained to procure a Disposition from the said Heir singular Successor in Favour of his Pupils. 13 January 1677 Ferguson contra Ferguson. But this Obligation upon Tutors to answer for Omissions, is merely personal to the Minor and his Assigns, and not extended in Favour of Assigners 27 February 1684 L. & Lady Dunlop contra Hamilton. And a Tutor was found liable only for actual Intromission, his Office having endured but some few Months, and the Pupils Goods been in a Place infested with the Plague Gripe lit. Tutors Pluri l. 1. tit. 6. s. 22.

2 They must regularly answer to the Minor both for Intromissions and Omissions. Tho Curators were found liable for sums resting to the Minor by Bonds, which were lost through Negligence during the Tutorship, without putting the Minor to prove that the Curators knew of these Bonds: for they being produced by the Minor were presumed to have been in the Charter Chest; unless the Curators prove by Witnesses that they made Search there and found them not, nor any Inventories mentioning them, or where they were, 24 June 1680 Cleland contra L. Lamington. A Tutor was accountable for the Rents of Lands the Pupils Father died infeft in and possess of, tho the Pupil was not infeft, and the Tutor never intromitted 28 January 1628 Com. Missary of Dunhead contra Abercrombie. Because the Tutor's Pupil's not being infeft and the Tutor's not meddling, was his own Fault and Omission: for he ought to have infeft his Pupil in the Lands, and intromitted with the Rents, or done Diligence, and shew that he was lawfully debarred. A Father having by his Contract of Marriage provided for his Children of the Marriage to his Estate, and taken no Infeftment on the Contract with their Mother; but infeft himself and his Heir Male, and the Father's Brother having entered Heir's Male to him in that Estate, and disposed the same to a third Person, whereby the Children of the Marriage were excluded from it: then Tutor was made liable for their Damages, which he might have prevented by using Inhibition against the Heir Male; and ordained to procure a Disposition from the said Heir singular Successor in Favour of his Pupils. 13 January 1677 Ferguson contra Ferguson. But this Obligation upon Tutors to answer for Omissions, is merely personal to the Minor and his Assigns, and not extended in Favour of Assigners 27 February 1684 L. & Lady Dunlop contra Hamilton. And a Tutor was found liable only for actual Intromission, his Office having endured but some few Months, and the Pupils Goods been in a Place infested with the Plague Gripe lit. Tutors Pluri l. 1. tit. 6. s. 22.

3 A Father name Tutors or Curators with any Quality he pleases, as that they shall not be oblig'd to make Inventories &c. Act. 8. Feb. 6. Par. 8. 48. Not be accountable *quia tutela vel curatela* l. 5. s. 7. ff. de admin. & peric. tut. that being contrary to the Nature of the Office, and the Engagement of giving an Account indispenfible for keeping Tutors and Curators true and faithfully to their Trust. According to the Custom in France a Tutor is under so strict an Obligation to give an Account, that even altho the Minor after he came to Age had transacted with his Tutor concerning his Administration, or that by an Acquittance or some other Act he had discharged him when the Tutor had not accounted to him; all these Acts would be annulled. For it would be reasonably presumed that the Tutor were guilty of Fraud by keeping the Minor ignorant of the State of his Affairs, which he could have no Knowledge of but by an Account. So that these Sorts of Acts are reckoned dishonest and contrary to good Manners Les Loix Civiles &c. tom. i. part. i. liv. 2. tit. i. sect. 3. Art. 22.

4 Seeing Moveables are liable to perish, or to be lost, and that besides they yield no Revenue, the Tutors ought to sell them without Delay, and put out the Money to Interest l. 7. s. ff. de admin. & peric. tut. l. ult. s. ult. l. 22. in fin. C. cod. l. ult. C. quand. decret. opis non est. But if it be necessary or usefull to the Minor to keep some of the Moveables, such as Jewels, Pictures and other precious Moveables belonging

5 A Father is not liable for omissions - nor misauthorizing -
2 Efful. of nomination by father in any private dealing -
Tutor liable for intromissions only - [13] Tutors can't be made liable of moveables.

A Father as Administrator in Law to his Children, is not chargeable for Omissions or Misauthorizing Pluri l. 1. tit. 5. s. 12. And the making Tutors and Curators answerable for Omissions and in Solidum, having frighted many honest men from accepting the Office, whereby Pupils were often left destitute of Tutors and Curators, since our Law oblige no person to undertake such a Burden against their Will: a Father was impowred in his Liege Justice to name Tutors and Curators to his Children with this Qualitie, that they shall not be liable for Omissions, nor in Solidum, but only for their actual Intromissions, and each for himself Act. 8. Feb. 6. Par. 8. 48. So persons named by one in his Testament to be Tutors to his Son, who had succeeded to an Estate as Heir of Jarvie to his Uncle by the Mother, with this Condition that they should not be liable for Omissions, but only for their actual Intromissions were found *quia Tutors* liable only in the Terms of the Father's Nomination, for their actual Intromissions

1 February 1710 Rankine alias Little of Liberton contra Johnston and Henderson. But Tutors of Law and Tutors Dative, are still liable as formerly for Omissions; Tutors Testamentary too are so liable, if not expressly named with the foresaid Qualitie of Exemption. Not being

13 A Father name Tutors or Curators with any Quality he pleases, as that they shall not be oblig'd to make Inventories &c. Act. 8. Feb. 6. Par. 8. 48. Not be accountable *quia tutela vel curatela* l. 5. s. 7. ff. de admin. & peric. tut. that being contrary to the Nature of the Office, and the Engagement of giving an Account indispenfible for keeping Tutors and Curators true and faithfully to their Trust. According to the Custom in France a Tutor is under so strict an Obligation to give an Account, that even altho the Minor after he came to Age had transacted with his Tutor concerning his Administration, or that by an Acquittance or some other Act he had discharged him when the Tutor had not accounted to him; all these Acts would be annulled. For it would be reasonably presumed that the Tutor were guilty of Fraud by keeping the Minor ignorant of the State of his Affairs, which he could have no Knowledge of but by an Account. So that these Sorts of Acts are reckoned dishonest and contrary to good Manners Les Loix Civiles &c. tom. i. part. i. liv. 2. tit. i. sect. 3. Art. 22.