

Power of a Tutor - They can discharge a Debt - <sup>2</sup> *Sp. B. 100.*  
 They may borrow money. <sup>14</sup> They may pay without consultation  
 of the Lord. <sup>15</sup> They may buy up arrears. A minor with consent of his Curator  
 for less Dairs than were paid formerly, seeing the former Rent could not be got.  
 The Lords refused the Desire of the Petition 23 June 1675 Tutor of L. Rytton's  
 Daughter. Supplicants observed by Dirlston, because upon such Pretence, the  
 Lords might be wronged by their Tutor's Authority, and the Lords ought not to  
 determine concerning the Estate of private Men, except by way of Pro-  
 cess wherein all having Interest may be heard.

may grant  
a competent  
provision  
to a husband

2<sup>o</sup> By the civil Law, a Minor's Debtors could not safely pay to his Tutor  
 without the Sentence of a Judge authorizing the same. *8. fin. inst. ymo. 6.*  
 alien. licet vel non. But with the Discharge of a Tutor or of a Minor with  
 Consent of his Curators, whether of principal Sums or of Annuities, dated  
 in all Events secure the Debtor paying to him without the Authority of a  
 Judge interposed. *Balfour let. Tutor 20 July 1540.* And a Tutor Nominal  
 whom the Testament impowered to uplift the Pupils Annuities, was not  
 excluded from uplifting the principal Sum. *January 1665 Lyon contra*  
*Farquhar Dec. 131* observed by Gilmoir. But a Bond of Proovision in Favour  
 of a Daughter being so qualified that she should not assign gratuitously, and  
 dying without Heirs of her Body or without disposing for onerous Causes,  
 same should return to the grantor's Heir, the Creditor and her Curator ad litem  
 purposing a Constitution of the Debt against the Heir, was found intitled  
 to uplift in her Minority only the Annuities, and not the principal Sum  
 unless for an onerous Cause. *24 January 1706 Shaw contra Schaw 25 Februar*  
*1663 Aikenhead contra Aikenhead.* One being pursued for Payment of a  
 Debt as owing by him to the Pursuer's Father per Ficket having deposed  
 (referente aduersario) that he paid the Money to the Pursuer's Tutor, who  
 thereupon delivered him up the Ficket: the Lords found that the Ficket being  
 in the Defendant's Hand, the oath proved the Payment and retiring of the De-  
 bet and therefore absolved him. *13 January 1711 Forrester contra Forrester.*  
 Albeit it was alleged that the Debtors of Minors should pay only upon getting  
 a Discharge, which is necessary to constitute a Charge against the Tutor for  
 what they uplift.

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3<sup>o</sup> Tutors or Curators may carry on a Work left to the Minor which cannot be  
 otherwise disposed of. *Stair lib. 1. tit. 6. s. 10.* and may borrow Money for extrin-  
 sic things his Affairs. *Voc. Comm. ad tit. ff. de minor. n. 23.* They may employ the Mi-  
 nor's Money at Interest in good Hands or upon Land Security. They may pay  
 the Pupils Debts willingly without Sentence of a Judge for their Warrant,  
 unless a competent Defence was known to them at the Time of Payment. *7*  
*July 1667 Stevin contra Boyd.* And may relieve and clear his Estate of Bur-  
 den. *Stair ibid. s. 36.* As of a Liferent prudently bought in Appearance,  
 tho the Minor comes to be a Loser in the Event, where the Liferenter doth

14) not long survive the Bargain. *January 1691 Fletcher of Aberlady*  
*contra Murray of Blackbarony and others.* A Minor Lady was found enabled  
 with Consent of her Curators to provide her Husband a competent Liferent,  
 and

Curators can receive money to pay their debts... 76

and to transact with him for his Courts. *Stair* the a certain part 3000 27  
 February 1683 E. Lewin contra Mordgairn.

4<sup>o</sup> Tutors or Curators may name Factors to act in their Name in their Name, for  
 whose Management they will or in answerable. *C. li. C. procur. p. 1.* they are not  
 bound to be Factors or Servants. *Stair ibid. s. 36.* Where they think not fit to give  
 themselves the Trouble to serve the Minors that way, they are to constitute Fac-  
 tors, and Curators should put the Minor to deal with their Consent. *Stair* their Trust al-  
 lows them not to suffer the Minor to uplift their own Heir's Estate, least they  
 mispend and squander away their Substance. A Tutor or the Minor with Consent of  
 his Curator may give a reasonable Salary to such a Factor, tho the Office of Fac-  
 tor or Curator be commonly gratuitous. But a Tutor cannot send a Factor, or take  
 Money for his granting the same, which would be presumed to be paid out of the  
 Pupils Effects penult. *Febr. 1639. Misset contra Dog*

Tutors or Curators may pay out all Expenses that are necessary in fact or in cost  
 for the Affairs of the Minor, according as the Quality of his Estate, the Nature of  
 the Affairs, and the Circumstances may require. *C. 8. C. de admin. tut. But* the  
 Expenses cannot exceed the Revenue or Income, unless it be in Cases of great  
 Necessity, for the good of the Minor. *C. 3. pr. ff. de contrat. tut. & ut. act. Les*  
*Loix civiles ec. tom. 1. part. 1. lib. 2. tit. 1. sect. 2. art. 3.* They may always make  
 the Minor's Heir, may accept in their Name Gifts that will not be burdensome,  
 to the Minors, may transact in such Manner, that the Minor if he be a Creditor  
 may preserve his Debt, and if he be a Debtor, may find his Account, either in the  
 Diminution of the Debt, or in the Cash payon out. *Les Loix civiles ec. ibid. art. 5.*

2) A Curator may, after ceasing of the Tutor, enter Breve. *Stair* to the Minor's  
 Lands possed by the Tutor, and meddle with the growing Corn sown by him,  
 without being liable to an Ejection or Spoilize. *14 July 1610 Brute contra Sme-*  
*lat.* And, tho the Authority of the Court of Session be necessary to Tutor's Ab-  
 nation of his Pupils Lands, a Minor may, with Consent of his Curators,  
 effectually sell his Lands without the Warrant of a Judge. *13 December 1666*  
*Thomson contra Stevenson 2 Feb. 1630 Hamelton contra Sharp and others.*

5<sup>o</sup> By the civil Law, one of several Tutors or Curators may act or authorize the  
 Minor's Deed. *C. 4. ff. de aut. & conal. tit. l. 5. C. de auth. prest.* But by our  
 Custom where there are several Tutors or Curators named jointly, all must con-  
 cur in the Management to make it subsist; or if so many be appointed a Quo-  
 rum, that whole Quorum must act but one of three Tutors or Curators was autho-  
 rized to pursue the rest, for obliging them to accept or renounce, tho they were  
 all named jointly. *9 March 1628 Muri and Thomson contra Minked.* and  
 one of several Tutors named with a Quorum, who accepted the Office was  
 found sufficient to act, seeing the rest refused to accept. *11 Feb. 1676 Furbul*  
*contra Kutherford.* Because it is presumed to be the Will of the deceased to  
 intrust any one of the Tutors named by him, rather than a Tutor of Law or  
 Deive. Where Tutors or Curators are named without the word jointly, or any  
 Quorum express, the major part must concur. In which Cases if few or  
 should