

Expiration of Tut & Curatorship. 1. They may pursue an execution when the ward is imbecile. 2. A person removed as a Tutor can't be a Curator.

President Spotswood (pratt. tit. Tutors and Curators) says, that the Office of a Tutor by his being denounced Rebel falls to the King, who may dispose thereof.

An End is put to the Office, by the Sentence of a Judge, that is, the Lords Session act. 35. Par. 6. L. M. for tho' the Exchequer only gives Tutors, and Curators may be chosen before inferior Courts; such can be removed only by a Process before the Lords of Session d. act. 35. An End is put to the Office of Tutor or Curator either for the Minor's Fault or for the Fault of the Tutor or Curator. For the Minor's Fault, when he being irregular or unmanagable, and refusing to follow the Advice of his Curators, they pursue in execution, which they may do Stair lib. 1. tit. 6. s. 36. For the Fault of the Tutor or Curators when they are removed by a Process, as suspected of managing the Minor's Affairs treacherously, or of having an Intention to do so, for not having made Inventory of the Minor's Stocks and Edult. Act. 2. Par. 2. s. 3. Ch. 2. 7 July 1600 Gibson contra L. Dunkeld, or found Caution l. 1. 2. C. de tut. qui satisd. non ded. or because they or their Sureties turn insolvent Stair ibid. s. 27. or for being supinely negligent.

This by the Civil Law is a popular Action called an Action for removing suspected Tutor, competent to any Body s. 3. inst. de susp. tut. But with us it is pursued by the Minor with Advice of his Friends, or by them in his Name, or by his other Tutor or Curators Stair ibid. All kinds of Tutors or Curators may be impleaded as suspected, except a Father who is administrator of Law to his Children, who cannot be removed as suspected. But if it be evident that he is imberling his Children's Money, or if he be notoriously poor, a Curator may be joined with him, or he will be prohibited to lift sums till he find Caution.

12 Feb. 1633 Govan contra Richardson and generally, unless things of a heinous Nature be proved against Tutor or Curators, the Lords use, for saving their Reputation, either to join Curators to them 8 July 1667 Mitchell contra M'Lean observed by Dirlston or to oblige them to consent to the Nomination of a Tutor to manage the Minor's Estate 22 Feb. 1712 Gordon of Gordonstown contra his Curators.

There is the Difference between Tutors who are appointed by the Will of the Minor or Curators who are appointed by a judicial Sentence: that in the former case, the Minor's Tutor may be chosen Curators, and just as well Curators may be chosen Tutors.

The Effects of a Period put to the Office of Tutor or Curator. By the Civil Law, a Tutor or Curator is not so discharged by the Office being at an End, as that he may immediately abandon all Care of the Minor's Concerns: but he ought to continue his Administration up to those Affairs which he cannot neglect without occasioning some Loss or Damage to the Minor, and he ought to give Orders about every thing that is necessary, and which does not admit of Delay, till he has given up his Accounts, or till he has waiting for a convenient Time to give up his Accounts, delivered over the Affairs and Papers.

The 9th of the effect of a Tutor or Curator, cannot regularly be admitted to the other in England. Guardians are removed from their Office by a writ called Cuiusdam amovendo.

1 The Guardian management ends absolutely with the Office. 2 Effect of a Tutor or Curator. 3 That if a Tutor or Curator is removed, the Minor's Affairs are not bound to take any further course, but the Office is put to an End. 4 A Tutor or Curator is liable for his Administration. 5. Tutor or Curator is liable for his Administration.

Papers into the Hands of a Curator, or of the Minor himself who is become Major, that they may be look'd after C. un. C. ut caus. post. pub. ads. tut. l. 5. s. 6. ff. de admin. & persic. tut. But with us, after such an Office is expired, by the Effect of Law, or an End put to it by the Sentence of a Judge, the Tutor or Curator is liable no longer to manage the Minor's Affairs. A Tutor proving the Years of Pupillarity to be expired, cannot be thereafter compelled to answer as Tutor 15 April 1533, 14 Decemb. 1547. 12 Decemb. 1586. Tours contra Tours, or for any Deeds prestable by him visitate Officiis. Nor is a Tutor upon a Decree obtain'd against him before expiring of his Office, liable to the Minor's Creditors l. ult. C. de per. tut. & cur. except in so far as he has of the Minor's Effects in his Hand. So a Tutor who had intromitted with several Years Rent of his Pupil's Lands held tax'd-ward of the Crown, was found no further liable after Termination of his Office to the Donatory of the tax-ward Dutys of these Lands, than in quantum he had of the Pupil's Rent in his Hand 18 Feb. 1713 Countess of Capilt contra E. Ruglen. But if a Tutor did contract for his Pupil when he knew him to be insolvent, he is liable propter dolum subsidiaria to the other Party Berlich Decif. 73.

2 A Tutor who renounces the Office or whose Office is expired, is not bound to seek other Tutors or Curators to the Minor, since that may be done by his friends 30 July 1625 Lady Stanhill contra her Son. This by the Civil Law is the Duty of Tutors to substitute Curators to the Minor what was in his Predecessor's Title, conform'd to the Provisions without putting him to dispute the Validity of the Predecessor's Title, upon any Pretence of Neglect in the Person of the Tutor or Curator, to whom it will be preserved to recover Possession by Virtue of his Title as Records of the Law & Decemb. 1685 Durham of Omachie contra Lady Ethel Bottom. No 984.

5 A Tutor continuing to administer after expiring of Pupillarity, is liable as Curator for Omissions. But a Curator who continues to uplift the Minor's Rents after his Majority, is answerable only for his actual Intromissions, as negotiorum gestor unless he hath accepted a Factory from the Minor or the Curators before expiring of their Office, in which case he would be liable thereafter, as a Tutor 10 Novemb. 1671 Cas contra Elies. The Reason of the Difference is: because Tutors continuing to act after the expiring of their Office, are considered as Procurators, and so liable as before. As a Tutor meddling after Extinction of his Factory, is liable as while it stood per tacitam relocationem; the Factory being tacitly prorogated by the Consent of the Parties, inferred from the one suffering, and the other's acting. But a Tutor continuing to manage some Years after expiring of his Office, can be liable only for his actual Intromissions these Years, not as a Curator: seeing Curatorship which is a judicial Act having a definite Time in Law, cannot be prorogated by the tacit Consent of Parties, and the Minor may blame himself, that he did not at his perfect Age assume the Management of

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