

11) Comparing not competent to whom act Tutor [2] In what cases
competent before the expiration of the Tutor [3] In the nature of of
Tutor or father of his ward who son

of his own Estate.
A Tutor or Curator's Administration produceth Action betwixt the Minor
and third Parties. For as Tutors and Curators may pursue and be pursued during
their Office, for what is done by them virtute officij: so these Deeds after expiration
of their Office produce Action to and against the Minors as if done by them
-Belovs l. 2. c. 6. l. 7. ff. quod. ex fact. tut. vel cur. l. pen. C. cod. and for their
Fraud also the Minors must answer if gainers thereby l. 3. ff. eod.
The last Effect of a Tutor or Curator's Administration, is that it subjects the
Tutors or Curators and the Minor, to mutual actions of Count and Reckoning.
Which Actions may be commenced not only before the Court of Session, but
also before any inferior jurisdiction, to which the Defender is otherwise liable.
Yea even Commissarys were once found competent to judge in such Actions
-ond 30 January 1629 Glasgow Melvill. But after ward they were
found to be incompetent Judges in Matters of that Kind 8 Decemb. 1675
Wright and Jamelltown contra Veitch. None of these actions are ordinar-
ly competent till after the job of the respective Offices of Tutor or Curator
-l. 9. s. 4. ff. de tut. et rat. distrah. l. 2. c. 14. C. de admin. & peric. tut. 24 June
1600 Oceland contra L. Lamington because Tutors and Curators are
bound in Law to defend their Minors if there is no body else to do it. But
this Reason ceases in some Cases. Thus Action for Exhibition of Writes was
sustained at a Minor's Instance before his Majority, against one of his Tu-
rators who was chosen sine quo non, without the Concurrence of any of the rest of
his Curators, the Minor being authorized by two Advocates instantly named
at the Bar Curators ad hanc litem 23 July 1629 L. Haddo contra L. Lad-
giharn. But the Writes were ordained to lie in the Clerk's Hands
and not to be delivered to the pursuer till his Majority, that the Curator
might have an effectual Discharge thereof which the Minor could
not then grant, and the Lords would not supply by Caution 18 March
1630 inter eosdem. Where a Minor has several Tutors, and is Debtor
to some one of them; the Creditor may pursue within the Course of his
Office, if he renounce the Office 30 July 1625 Lady Stonyhill contra her
son Stav. lib. i. tit. 6. s. 17. Because the Minor may be authorized and
defended by the rest. So Action was sustained at the Instance of a Person
against his own Sons, who were Pupils and in familia; in respect that
before the commencing of the suit they were furnished by a Judge with
Tutors to defend them, and the Act of Tutorij was produced 7 March 1623
L. Bargany contra his Sons.
Action is competent to a Minor after pupillarity against his Tutor or
Tutors (called in the Civil Law actio iure director arbitrium tutela) and a
Majority against his Curators one or more (called utriusque curacionis causa actio
directa) that he or they may account for their Administration, and restore
what they have belonging to the Minor.
By the Civil Law Tutors are to be discussed in this order. Those who act

acted if solvent, are liable to be discussed in the first place, before those who
did not act and be sued l. 3. C. de divid. tut. then a subsidiary action lies
against the Magistrates l. 1. s. 15. ff. de lit. & rat. distrah. tot. tit. C. de magist.
conven. And the honorary Tutors are to be convened in the last place l. 3.
s. 2. ff. de admin. & peric. tut. But this our Custom observes not flav. ibid.
s. 23. for by our Usage the Magistrate is not, as by the Roman Law, obliged
to give the Minor a solvent Tutor, to take good Security from those who
are bound to give it. The Magistrate only confirms the Nomination of a
Tutor, and gives him the Bulls, so that Judges are not answerable for the sol-
vency of Tutors. And all Tutors or Curators being liable, in solidum, jointly and severally
of them may be called upon without insisting against the rest 11 Feb. 1630
Guthrie contra Guthrie. 9 March 1684 Lockhart contra Elties. Action
was sustained against the accepting Tutor's Nominate, without citing those
who did not accept or act 23 June 1705 Murrays contra Murray. But
the Lords refused to sustain Process against the heir of a Tutor, till the Co-
tutors were cited: because he could not so well know how to account for the Ad-
ministration 2 December 1660 Seton contra Seton. For making
up a Charge against Tutors or Curators, they are bound to exhibit to the
Minor, their own Account-Books: Because these are in Effect the Minor's
Books, ^{in solidum, jointly and severally} ~~liber regulariter nemo tenetur edere instrumenta contra se ad~~
fundandum litem. 2d. Infra pag. 1624.

What may be charged against Tutors and Curators respective in the Actions
aforesaid at the Suit of the Minor, hath been mostly handled before (supra
sect. 2.) where the same fell naturally under Consideration. I shall therefore
here content myself to observe only a few things. Notwithstanding that the
Tutors or Curators have made Inventories of the Minor's Writs and Estate, the
Minor may charge them with superintromission, that is, what can be
proved they intromitted or might have intromitted with over and above or be-
yond the Contents of the Inventory principal and additional, if any be Act. 2.
Part. 2. Sep. 3. Ch. 2. Which Superintromission may be proved by the Bulls
of the Tutors June 1665 Walkerstone contra her Tutors or by the Bulls
of the Curators. A Tutor was found liable to count to the Minor for Reverts
that were no part of the patrimonium pupillare: in respect these had been
uplifted and discharged by him lutores nomine. But the Minor being nearest
of kin to the person to whom they belonged, was ordained to establish a Title
in his Person as Executor to him, in order to discharge effectually the Tutor
upon Payment 31 December 1608 Bruce Lady Reddock contra Goughth.
Tutors and Curators are liable to hold Count for their Intromissions with virtual
Rent of the Minor's Lands, according to the Price they receive, or at least accor-
ding to the Commissary's Fairs 14 January 1662 Strouan Murray contra his
Tutor observed by Gilmour. McKenzie observ. on Act. 7. Part. 2. s. 6.
By the Civil Law a Tutor, ^{Nominate} is not exempted from paying up any Ballance
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