

Effects, so that they have been obliged to borrow or advance Money of their own; the Interest of the Money which they shall have advanced will be allowed them, till a sufficient Fund can be raised either out of the Minor's Revenues or otherwise for their Reimbursement l. 3. s. 1. et seq. ff. de contrar. tut. act. Les Loix Civiles &c. tom. 1. part. 1. liv. 2. tit. 1. sect. 5. s. 5. For nemini officium debet esse damnosum.

Tutors or Curators get no Allowance of superfluous and extravagant Expences, such as neither they nor any prudent person would have laid out in their own Affairs; the Office being intended for improving and bettering, and not for squandering away the Minor's Estate l. 3. pr. & s. 6. ff. de contrar. tut. act. l. 9. s. 6. ff. de admin et per. tut. l. 6. C. 10. l. 2. ff. ubi pup. educ. deb. General Articles use not to be sustained in a Tutor or Curator's Account of Discharge or Reimbursement. Thus the Lords refuse to sustain a general Article of incident Charges in a Curator's Account during the whole Time of his Office, spent with Agents and others in Proceedings about the Minor's Affairs; but ordain'd him to condescend upon the Particulars, and if he kept a Book or Diary of his Disbursements, so as that he could particularly declare what he had expensed on such ~~particular~~ occasions, the Lords inclined to modify the same as they should think reasonable 23 January 1677 *Telfer contra Sandylands* observed by Dirlston.

If Tutors or Curators have not made Inventories in the Terms of Law, they are to expect no Reimbursement of their Expences in the Minor's Affairs Act 2. Jac. 2. s. 3. Ch. 2. Tho necessarily bestowed in Suits or legal Diligences. A Tutor was not allowed his incident personal Charges in the Pupil's Affairs not particularly instructed; in respect Inventories were not given up in the Terms of Law. Albeit the Tutor had done the Equivalent by signing an Inventory of the Pupil's whole Estate Writs and Evidence, in presence of the nearest Relations on the Father and Mother's Side, and giving up the said Inventory to be kept by them as a Charge against him 11 June 1709 *Arise contra Forsyth*. But a Tutor with notwithstanding of his judicial Inventories, get Allowance of Charge for the Minor's Aliment, or what is expended on his House or Estate Act of Scot. 25 Feb. 1693. Mean-time they get no more for the Minor's Aliment, than they can instruct was expended. Nor will they ever get that beyond the Allowment of the Minor's Stock 17 November 1690 *Sandylands contra Saiffar*. The Expence of Quote and Confirmation of a Minor's Father's Testament was sustained to his Curator as a ground of Compensation pro tanto of the Minor's Charge against him, albeit the Curator had neglected to give up judicial Inventories of the Minor's Effects 18 July 1707 *Yeaman contra Griens*. Because these Expences were necessary

necessary and profitable to the Minor; and the Omission of Inventories cuts off only personal incident Charges. If Tutors or Curators have Families established to them by the Person who named them, these are understood to be in lieu of incident Charges l. 33. s. ult. ff. de admin et per. tut.

But none of these counteractions can be pursued by Tutors or Curators till after they have cleared their Accounts with the Minor. Because till then, they are presumed in his habere, to have sufficient Effects of the Minor to answer all Demands on them, &c. Nor yet was Action sustained at the Instance of a Tutor's Assigny, before the Tutor cleared with his Pupil; unless he would find Caution to clear what should be resting to the Pupil by his Decret 24 Jan. 1662 *Shamfay contra E. Wynton* 7 July 1676 *Spence contra Scot*. For albeit our Law doth not, as the Civil Law hypothecate the Goods and Goods of Tutors and Curators for their Intromissions with the Minor's Estate: yet Minors have jus retentionis of what may be claimed from them by their Tutors and Creditors till their Accounts be cleared. And if this Privilege could be vindicated only personal objections against the Tutor or Curator, it might be easily evaded or disappointed by their assigning the Minor's Bonds or other grounds of Debt. Yea a Minor's Estate was not allowed to be adjudged at the Instance of a Person deriving Right by Assignation to the Minor's Debt, purchased in the Assigny's Name by his the Assigny's Debtor who had been Curator to the Minor, before he had cleared his Accounts with the Minor: albeit the Assigny had for the Assignation discharged the equivalent Debt owing to him by the Curator; and it was alledged that a personal Exception against the Curator should not operate to the prejudice of a third Party who derived no Right from him; as the former could not be hindered to pay his own Debt to the Creditor, either by Money in specie, or by procuring an equivalent Right to him 20 July 1714 *Brabner contra Cook and Melvil*. Because quod non licet directe, non licet per ambages. And if it were otherwise, the Privilege competent to Minors for preventing Inroads upon their Estates by their Tutors and Curators, might easily be disappointed, by their purchasing in the Person of Trustees Rights to the Minor's Debt, and making them subsist as grounds of Eviction of the Minor's Estate, tho purged by his own Means, and depriving the Minor of the Benefit of Ease he has got from the Creditors. But then one who hath Right to call a Tutor or Curator to Account, must give in a present Charge and insist against him, if he pretend to stay Execution against himself at the Instance of the Tutor or Curator or his Assigny 2 December 1679 *Oreland contra Bailie of Lamingburn*. And such counter-