

Lib. 4. Tit. 3. §. 7 of the Stat. or furious Act 18. par. 10. p. 4. or dumb and deaf
§. 4. Inst. de curat. or affidis vna by Reu. et some infirmity are incapable
the Administration of their own Estates and Affairs l. 2. ff. de cur. fur. 18
both Tutor and Curator of Law to him or them. By Agnates and Cognates
do not understand strictly those qui per vtilis socius cognationem juncti sunt,
as they are taken in the Roman Law §. 1. Inst. de legit. Agnat. Succa But the
men by the Stat. §. 10.

Such a Tutor and Curator may be served at any time, even after Tut
are constituted, by an Inquest upon a Brief of Fidelity issued forth of the
cery. l. 6. par. 3. What Tutor of Law to Minors must serve with
in Year and Day from the time they were qualified to do it: So that they
are less privileged than Tutors of Law to Minors persons who are nearer
the Heirs of the Persons to whom they are given. Thus a nearest Agnat
having raised Brieves to serve himself Curator to an idiot five Years a
ter his Majority, was preferred to one who had a gift of Tutory and Curator
Tutor, found Caution, and given the oath of faithful Administration before the
of the Brieves 22. Feb. 162-8 Calquhoun contra Wadsworth. The Tenor of
a Brief of Fidelity runs thus: Georgius Secundus de Keecomeli & Balivis
causae E. Salutem. Mandamus vobis & praecipimus, quatenus per vos et
fideles homines patrie per quos rei veritas melius sciri poterit (magno Saer
mento interveniente) diligentem et fidelem inquisitionem fieri faciatis si
sit incompotens mentis, fatuus et naturaliter idiotus, si quod timetur de alienati
one huius terrarum suarum, quam aliarum rerum mobilium et immobilium
Et quomodo sustinuit istam salutatem? Et si sit, quis sit hunc propinquior
sanguineus dicitur? Et si ille propinquior sit rei suae providus, et potens capi
re veridice de administratione rei alienae? Et si sit legitime aetatis? Et
quod per dictam inquisitionem diligenter factam esse inveneritis, sub sigillis
vestris, et sigillis eorum qui dictae inquisitioni intererunt faciendae, ad Cap
clam nostrum mittatis, et hoc breve teste meo apud Dunburgham &c. The
first Head of this Brieves, whether the Person be compos mentis fatuus or a
natural idiot, and that there is ground to fear that he may alienate his Lands
or Goods, doth comprehend the Case of such as are otherwise incapable to manage
their own Affairs, as dumb and deaf Persons &c. Stat. Lib. 4. Tit. 3. §. 9. conform
to the Civil or Common Law §. 4. Inst. de curat. to the Determination where
of the Statute (Act 18. par. 10. §. 6) about the Tutors and curators of furious
Persons doth refer. Brieves of Fidelity and Fidelity differ in this, that the
latter bears a Warrant to enquire, si sit incompotens mentis, prodigus et furiosus
vnde quod ~~incompotens~~ neque ^{neque} templi ^{neque} possessionis habet, sed bona et possessi
ones elatrandas et dissipandas profertur, et quomodo sustinuit illam furiosi
tatem &c. Neither of these Brieves contain the Article of Enquiry, wheth
the Person to be served is nearest Heir, and if he be, who of the Mother's
Side is fittest to have the Education of the idiot or Macman. And therein
Brieves

Brieves of Fidelity and Fidelity differ from Brieves for serving Minors
Tutors of Law. But the Tenor of Fidelity by their (Preteritis) Parents,
ought to supply that Article. Stat. §. 10. In the service of such a Brief
the Inquest must take Trial and determine how far the Parties
both laboured under such a natural Incapacity, as that they were
Reduction of the Decree of Fidelity or Tutor. But in such a case, the
fact only from the date of serving the Brief, where the Inquest is
per se no more: Yet the Decree is not effectual from the date of serving the
by the Inquest to have the Decree of Fidelity or Tutor. l. 7. par. 3.
whose Verdict is declaratory and hath a Retraction of a Decree, and pro
bative per se for annulment of a Decree. l. 7. par. 3. In such a case
Importance of a Brief of Fidelity which is a great Person's Life is great
putation, the Lord is called to declare the Law, and in such a case
the Masters of the Session, in reports of Reports &c. In such a case
a Declarator or Procoq. l. 7. par. 3. that the Decree is annulment
not sustain or to delay the Decree: But he was allowed to advise a Brief
ses before the Inquest, to prove that the extrajudicial Acts were
were the Acts of Fidelity, and that when he was done he was con
ti animi, and had the free benefit of it. Heaton 19 July 1607. Barton
contra Barton.

Sir Thomas Craig Feud. lib. 2. Tit. 20. §. 7 will have the Tutor preferred
before the nearest Agnat to the Tutor of Fidelity or Fidelity (Persons
having Lands. But Sir George Mackenzie (Observ. on Act 18. par. 10. §. 6) pre
fers the nearest Agnat to the Tutor of these as well as to the Tutor of
Minors, without allowing any such Fidelity interest to the Superior; and
thinks, that if such a Fidelity do ever belong to the Superior, it is taken
away by Act 18. par. 10. §. 6. In appointing Tutors of Law to Fidelity and
Furious Persons, those of the full Blood or who have both Parents
in common, are preferred to those of the Half Blood who have only one
common Parent, according as they have Right to succeed to such a Per
son's Estate: Yea the next Agnat to a Tutor of Law by the whole Blood was
preferred in representation to a nearer Kinsman related by the Half
Blood, who had got the Gift of Tutory Tutor when the other was Minor and
unable to act 23 Feb. 1710 Mar. chief of Hornipea contra Macswell of
Lechiband. But Sir George Mackenzie (Ibid.) is of Opinion, that the
Heir of Line is always to be Tutor of Law, even tho' the Estate be conquest,
a legal Administrator, such as a Father is to his idiot or furious Child,
l. 4. pr. C. de cur. fur. And a Husband to his Wife who is an Heir of Line
under such Distemper, will exclude the next Agnat from the Office. The
Wife by the Civil Law, a Man could not be Tutor to his wife &c.
l. 4. ff. de cur. fur. But in Scotland (Mackenzie Observ. on Act 18. par. 10. §. 6)