

No. 24. 1548. *December 19.* A. *against B.*

Ane woman may be gevin and constitute be the King tutrix dative, speciallie the mother to the dochter or sone.

*Balfour, p. 117.*

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1550. *Pen. April.—1559. May 2.*

UUPHAME BALFOUR and Her DOCHTERIS.

No. 25.

Curatouris beand lauchfullie chosin be ony minor, sould give thair aith befoir a Judge, the time of thair electioun, of leill and trew administratioun in thair office : and forder, thay sould find cantiouin for the samin effect, gif the minor be furth of the realme.

Ane woman may be gevin be a Judge, curatrix to hir awin bairn, speciallie *ad negotia*, and not *ad lites*, scho findand cautiouin for compt and rekning, and makand faith for leill and trew administratioun in hir office.

*Balfour, p. 122.*

\* \* \* The like found 11th February, 1559, Marion and James Hendrysonis.

IBIDEM.

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1550. *Pen. April.*

AGNES JOHNSTOUN *against* JAMES JOHNSTOUN Hir SONE.

No. 26.

The mother may be chosin and electit to be curatrix to hir awin bairn, quhidder scho wes chosin tutrix testamentar or not.

*Balfour, p. 122.*

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1550. *December 18.* TUTOR of CONGILTON *against* The LADY.

No. 27.

In an action pursued by the tutor of Congilton *against* the Lady, excepted by her, no process at the tutor's instance, because he had not found caution; which exception was sustained.

*Spottiswood, p. 345.*

\* \* \* This case is reported by Maitland :

No. 27.

In an action pursued by the tutor of Congilton against the Lady, it was excepted by the said Lady, that he had no action to pursue as tutor *de quod non satisdedit* ; which was found relevant.

*Maitland MS. p. 103.*

\* \* \* See No. 37. p. 16226.

1551. February 18. The LAIRD OF WEYMIS *against* JAMES CLEPAN.

No. 28.

Gif ony persoun obtene of the King ane gift of tutorie dative, and according thairto findis sovertie for lauchfull administratioun, and is in poesessioun of the pupillis gudis and geir, or of the keiping of his persoun, and zeir and day being bypast fra the deceis of the pupillis father, befor the narrest agnat be servit and retourit be ane breif as tutor of law to the samin pupill, and findis caution for leill and trew administratioun of his gudis and geir ; in this cais the tutor dative aucht and sould be preferrit to the tutor of law ; albeit utherwayis, and be the law, the tutar of law is preferrit to the tutor dative.

*Balfour, p. 118.*

1553. February 1. JAMES DAVIDSONE *against* ALEXANDER STUDEMAN.

No. 29.

Gif the tutor testamentar happin to deceis, or renunce his office of tutorie, the narrest agnate or kinnisman on the fatheris syde to the pupill, within zeir and day efter his deceis or renunciatioun, may rais ane breif, and be servit and retourit tutour of law to the pupill ; quhilk gif he do, he aucht and sould bruik and joise the office of tutorie, and have the keiping of the pupillis persoun, and adminstratioun of his gudis and geir, during the time of the tutorie : And gif ony persoun obtenis of the King ane gift of tutorie dative within the said zeir and day, he on na wayis sould be admittit to the office of tutorie, nor preferrit to the said tutor of law ; because the King may not dispone the office of tutorie dative to ony persoun, untill the compleit ische and out-ryning of ane zeir and day efter the deceis or renunciatioun of the tutor testamentar ; bot that beand by-past, he may do the samin, and provide for ane tutor to the pupill, that he be not destitute of ane guyder and governour.

*Balfour, p. 115.*