

No. 41. vant by the Lords, and that he might use the said office of tutory notwithstanding the allegiance made on the contrary.

And also it was alleged by the said Ma. that notwithstanding the tutory foresaid, yet ——— the bairn and heir foresaid should be delivered in the hands of the said Thomas as tutor foresaid, when the heir foresaid raised her briefes to be served in her lands and heritage, the said Thomas proponed bastardy against her, alleging her to be a bastard, and therethrough would have denuded her of her heritage, and compelled her to plea the said matter of bastardy in the Spiritual Court, where she obtained sentence for her; from the which sentence the said Thomas appealed, and so the matter depended as yet; and also the said Thomas pursues and alleges, that the haille heritage pertains to him by reason of tailzie, and by that manner would denude the said pupil of her haille heritage, and has moved divers other pleas to the hurt and wreck of the said pupil; which allegiance was admitted by the Lords, and decerned, that the pupil heir foresaid should not be delivered to the said Thomas for the causes and suspicion founded.

*Maitland MS. p. 126.*

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1560. *March 22.* CREICHTOUN *against* CREICHTOUN.

No. 42.

Sa lang as the minor is on life, and seisit in the landis pertening to him, he being absent and furth of the realme, his curatour may intromet with and uptak the mails and dewteis of his landis.

*Balfour, p. 124.*

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1561. *December 2.*

JAMES KINCAID *against* JOHNE JOHNSTONE of Cotefield, Tutor to JAMES KINCAID of Brochtoun.

No. 43.

The time of tutorie being endit and expyrit, the pupill, male or female, is at his awin fre will and libertie to passe quhair he pleisis; and gif the tutor thairefter haldis and detenis him, his narrest kinnismen hes just richt and title to cause him be put to libertie.

*Balfour, p. 121.*

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1563. *April 2.* ROBERT GRAHAME *against* The LAIRD of DRYLAW.

No. 44.

Ane minor persewand ony action, not havand curatouris, may desire in judgment, and at the Bar, curatouris to be gevin to him *ad lites*, and thair namis to be insert with him for thair interes in the summoundis, and proces, albeit the samin summoundis be not intentit in thair namis for thair interes.

*Balfour, p. 122.*