law for not making up judicial inventories at the time of his accepting the office of curator, or acting as such; from the omission whereof, the presumption of concealing, suppressing, and embezzling, becomes *juris et de jure* by the act 1672; *2do*, The act of Parliament, as clearly as words can express, excludes curators who neglect to make inventories from all manner of charges expended by them in the minor's affairs. It is absurd to pretend, that the expenses sought to be allowed were in *in rem versum* to the minor; for, by that rule, all incident charges of journies, or communing with the minor's debtors or creditors, might with as good reason be claimed; *3tio*, All omissions, however personal as to the curator, still become real lesion and prejudice to the minor; *4to*, However necessary the making up of titles may be, yet a curator, who enters upon his office otherwise than law prescribes, is presumed to do so rather for his own advantage, and to get access to the minor's effects, than towards the fair discharging of his office—*nam semper præsumitur contra versantem in illicito*; and though this article might have been sustained in an agent's account to a curator who employed him, that is no argugument for the curator's having allowance thereof from the minor contrary to a standing law; seeing it is not in the case of payment of a minor's debt. No. 246.

The Lords sustained the article of expenses of quot and confirmation of the minor's father's testament as a ground of compensation *pro tanto*.

Forbes, p. 185.

1707. *December 5.* JOHN CUNINGHAM of Enterkin *against* His CURATORS.

No. 247.
Curators of a minor who suffered him to intromit with his own rents during their office, accountable for the whole rents, except in so far as they could prove he actually intromitted, tho' the minor had retired receipts and renewed discharges to the tenants, and, after majority, fitted accounts with them as to preceding rests.

Enterkin's curators, who had suffered him, during their office, to intromit with his own rents, being pursued at his instance to count and reckon, the Lords, July 23, 1707, found, That the minor's uplifting a part of his rents did only make him liable for his actual intromissions, and did not exonerate the curators from counting for the whole rents, deducting what the minor uplifted. The curators now alleged, That Enterkin counted with and discharged the tenants, and thereafter retired these receipts, giving new ones in place thereof, and applying former payments in satisfaction of subsequent rents due to himself; which uncontroulable acting by himself, without advising the curators, was sufficient to exonerate them, who never meddled, further than to authorize him, when required, knowing his activity and application; especially considering, that he continued his management after majority, and fitted accounts with the tenants as to preceding rests, so that the curators could not know what he received, the receipts being retired and renewed.

Answered for Enterkin: That his discharging after majority some tenants, could not hinder to charge his curators for the rents of other tenants never intromitted with by him, and suffered to perish by the defenders' negligence. Again, seeing both the tenants and the curators were liable to Enterkin, he might take what he

No. 247. could get from either, and seek what he wants off the other; for a minor getting, after majority, decree for his relief of cautionry, was not excluded from the benefit of reducing his bond upon minority; February 20, 1668, Farquhar *contra* Gordon, No. 65. p. 5685.; and the homologating one article doth not infer the homologation of another article in the same writ; November 22, 1662, Primrose *contra* Dun, No. 85. p. 5702.

The Lords sustained the defence to exonerate the curators only as to what Enterkin actually intromitted with.

Forbes, p. 204.

1708. *December* 31.

MRS. GRIZEL BRUCE, Lady Riddoch, *against* HUGH FORSYTH of Garval.

No. 248.
A tutor found liable to account as such to the minor for rents that were no part of the *patrimonium pupillare*, in respect these had been uplifted and discharged by him *tutorio nomine*. But the minor being nearest of kin to the person to whom they belonged, was ordained to establish a title in her person as executrix to him, that she might, upon payment, discharge effectually the tutor's representatives.

James Alexander, in his daughter's contract of marriage with William Bruce, brother to the Laird of Auchinbowie, "disponed his lands of Riddoch in favours of the said William Bruce and Janet Alexander in conjunct fee and life-rent, and to the heirs of the marriage in fee, reserving to the said James Alexander, the disponer, and Grizel Inglis, his spouse, during all the days of their life-time, two chalders of victual allocated upon a particular part of the said lands." William Bruce died before James Alexander and Grizel Inglis, leaving James Forsyth of Garval tutor-testamentary to Grizel Bruce, his daughter; who possessed and uplifted as tutor the rent of the whole lands, including the reserved two chalders of victual, for several years. After expiring of the tutory, Mrs. Grizel and her curatrix pursued Hugh Forsyth of Garval, as representing the said James Forsyth, the pursuer's sole tutor, to count and reckon; in which process, she charged him with the two chalders of victual reserved to the grandfather and grandmother, for so many years as they were uplifted by James Forsyth *tutorio nomine*.

Answered for the defender: He cannot be charged to count to the pursuer for the rent of the life-rented lands, which were no part of the *patrimonium pupillare*, but he is liable in repetition for the same to the representatives of the pursuer's grandfather, who can only exonerate him effectually; neither doth it alter the case, that the pursuer represents her grandfather, seeing the defender can only be liable to count to her, as executor to the grandfather, for the simple rents, without interest; whereas, in a count and reckoning with her as a pupil, he would be liable also for annual-rent of these rents.

Replied for the pursuer: The tutor having uplifted the reserved rents *tutorio nomine*, it is not the defender's business to dispute the pupil's right to the same; for, if tutors were allowed to free themselves from this way of counting for the pupil's rents, because the pupil had no right thereto, it were of dangerous consequence, and might induce tutors to propale the secrets and latent defects of their pupils' rights, in order to free themselves from a count and reckoning.