

Fisher she brought with her; the Fisher was found liable to the Father's Creditors, unless the Minor would purge the Estate of his Lady's Life-rent; and if the Lands were disburdened thereof, the Fisher was found not to be subject to the Creditors. The Minor was also, obliged, to make forth coming his whole Intromissions with the Rents 2^o. ~~James~~ 1680 Bayn contra Henderson son of Fordel. And where a Minor's Obligation in his Sister's Contract of Marriage for a Fisher to her, in Contemplation of her renouncing her Legitimie, was found null for not being consented to by the Minor's Curator: the Sister was ~~discharged~~ reposed against that Discharge of her Portion Natural 19 December 1632 Maxwell of Grubton contra E. Nithsdale. Reduction of a Disposition of Land upon Minority and Lesion takes Effect from the Beginning, and not from the time of Litis contestation only: seeing the Party is restored to the same Estate he was in before the Alienation 25 January 1631 Houston contra Maxwell.

Those who have the Inspection of persons under Age, or their Fortunes, are so Tutors and Curators properly so called. 2^o Duch Tutors and Curators. Both Tutors and Curators in England go by one common Name of Guardians, which the English have from the Romans *l. i. tit. 13*

Tit. 1.
Of Tutors, and the several Kinds of them.

A Tutor, *quasi tutor*, so called a *tutor* *l. i. §. 1. ff. de tutor.* his main Business being to protect the Pupils Person and manage his Estate, persons during their Pupilarity who are destitute of their Fathers, and incapable of governing themselves are justly subjected to the care and Conduct of Tutors who may be to them in stead of Fathers as much as possible, and who may take upon themselves, the care of their Education and the Management of their Estates: the miserable Estate of Orphans seems to challenge from the Publick the placing another Father in the room of him they have lost, that they may not be abandoned. The Tutor's Office is termed *Tutory*, *Tutorat*, or *Tutelage*.
Tutors act by themselves for the Pupils, without their Concurrence.

Tutors are of three Sorts 1^o Nominale or Testamentary Tutors. 2^o Tutors of Law. 3^o Tutor's Indivie.

Sect. 1.
Of Tutors Testamentary.

Tutors Testamentary are those named by the Father in Testament, or some other Will, by Virtue of the paternal Power. They are so called because the Civil Law appoints them to be named in Testament, or in Wills ratified in Testaments. And tho' such a Nomination in our Custom may be made in any other Will than a Testament, it is still of a Testamentary Nature Ambulatory and Alterable at any time during the Father's Life, as in Articles mortis. The Nomination of a Tutor in a separate Will, should be entered in the Commissioners Register, otherwise

Tutors of Law - Different men with us from that of the English Law - It is the same general name the same of consequence who with us is the Tutor of Law - answers

otherwise no Body could safely deal with him as Tutor Stewart's, to Dirlot Doubts lit. Tutors. A Father may name Tutors to his posthumous Children 11 March 1555 Murray contra Marshall. A Nomination of Tutors to Children in general, will comprehend those born after, as well as before the Testator's Death. Because a Child in the Belly is considered as born in things tending to his Advantage *l. 7. ff. de statu hom.* As Bastards may make Testaments in Favour of their lawful Issue without the Kings License so such Persons, tho' not legitimate, may leave Tutors to their lawful Children 8 March 1620 Mair and Thornson contra Kirkhard. By the Civil Law a Grand father that is the Father's Father, could name Tutors to his unemancipated Children *§ 3 Inst. de Tutoris.* But seeing by our Law Children are emancipated by Marriage, the Grand father cannot name Tutors tho' the Father had omitted to do it; unless the Father of the Children had continued in familia with the Grand father Stewart's Answers to Dirlot. Doubts lit. Tutor *ratione rei.* The Mother or any person who gives any thing to a Child may also name Tutors for what is disposed during the Child's Pupilarity: but cannot appoint a Tutor pro hoc or for managing any other Estate belonging to the Pupil, which is only the Father's Privilege to do. *Footwood Pratt lit. Tutors and Curators.* Stewart *ibid.* These Tutors appointed by others than the Father *rei sui* are rather Administrators and Managers than properly Tutors.

Sect. 2.

Tutors of Law.

Tutors of Law are those whom Law calls to the Office. Tutors of Law are either Extraordinary, who are given to Peers or furious persons &c. of which hereafter (*infra* chap. 3. tit. 1.) or Ordinary, who are given to Pupils upon Account of their Monage. If there be no Tutor Testamentary, or if the person named accept not, the nearest Agnat or Kinsman by the Father's side, who is 25 years of Age and would be heir to the Pupil, may succeed to the Office by Law *lit. 52. par. 7. §. 3.* who is therefore called Tutor of Law. The reason why the nearest Agnat by the Father's side succeeds to the Office by Law is: because the Duty naturally falls upon those whose Relation engages them to it more strictly, and who being called by Law to succeed the Minors ought to take care of their Estates. This is agreeable to the old Roman Law, before Justinian levelled Agnats and Cognats, both as to the Right of Succession and Tutory. *ubi Successionis est emolumentum ubi et Tutelle onus esse debet. Inst. tit. de legit. patron. tut. l. 1. pr. l. 6. ff. de legit. tut.* with this Difference, that in Scotland the Office devolves upon the next Agnat, whereas the Romans called all of the same Degree to it equally. Herein our Law differs from that of England, which gives the Guardianship to the nearest of Kin on that side, to whom the Inheritance cannot descend (*Cohe. Inst. §. 8. Co. Cowel Inst. lib. 1. tit. 15.* because, as the Woolf ought not to have the Lamb to keep: so Youth are most safe in the Custody of such as expect no Advantage by their Death. For the next Male Agnat whom Law calls to this Office. For a Woman, tho' she would be heir to the Pupil failing his own Children, cannot be served Tutor of Law to him Stewart's Answers to Dirlot. Doubts lit. Tutors. The Youngest of three Brothers both the Tutor of the Children of the mid Brother deceased, who left an Estate conquest by himself or of his own Purchase, tho' he would