

would not succeed in that Estate to the mid-brother failing the Children, which would ascend to the eldest brother Stewart ibid. because the office of the Tutor of Law goes not to him who would succeed to the Pupil's Father, but to him who hath the nearest prospect of succeeding to the Pupil, who is the youngest Uncle his Heir general to whom the mid-brother's Estate tho' conquest in his Person, falls as the Child's Heretage. Natural Children, or a Bastard's lawfull Children, can have no Tutor of Law: because they have no Agnats 10 July 1554.

One may be served Tutor of Law before any Judge, upon a Brief out of the Chancery, tho' the Pupil live not within his jurisdiction 8 March 1636 Stewart contra Henderson Stewart's answers to Dirlet. Doubts ibid. Even as the general Service of an Heir may be expedite before any ordinary Judge having jurisdiction: because it is voluntaria jurisdictionis, and Mānus privatam not forced upon any Body. Whereas according to the Civil Law by which Tutorship was minis publici, no Man could appoint Tutors to any living without his jurisdiction.

The Brief (in Latine breve) is a short Rescript from the Prince, commanding a Judge to cognosce and determine a cause laid before his Majesty in Chancery. The form wherof follows Georgius &c. Vicecomiti & Balivis suis de ec. Salutem. mandamus vobis & precipimus, quatenus per probos et fideles homines patria potestate et fidelem inquisitionem fore facientes, quis sit propinquior Agnatus i. e. consanguineus ex parte patris, dilecto nostro A. B. filio legitimo quondam C. D. sui patris? Et si ille propinquior excedit aetatem annorum completam? Et si sit inter eos providus et potens cavere idonee de administratione rei alienae? Et si ille propinquior sit immediate successorius ipsi A. B. si ipsum contigerit in futuro decedere? Et si sit, quis tunc ex parte matris idoneus, apud quem usque ad episcopum legitimum aetatem possit et debet educari? Et quod per dictam inquisitionem diligenter factam esse noveritis, sub sigillis vestris, et sigillis eorum qui dicta inquisitioni intererunt faciendae ad Capellam nostram mittatis, et hoc breve, teste meo ipso, apud Edinburgum die Mensis Novembris et Anno Regni nostri 1731.

The Inquisition made in the Service of this Brief is mainly to know if the person be nearest Agnat to the Pupil, and if he be 25 years of Age. For tho' with us one is Major at 21 years of Age, he cannot be admitted to the Office of Tutor of Law till he pass 25. Because our Lawgivers thought more firmness of judgment requisite to the right Management of other Folks Affairs than a Minors own. So that if the immediate Heir be not 25 Years old, the next Agnat who has attained to that Age must be Tutor. The other heads of the Brief are seldom much adverted to by the Inquest: for the Tutor's Frugality and Conduct in his own Affairs is presumed till the contrary appears, and it belongs only to the Clerk to enquire into his Ability to find Caution. Nor is the friend on the Mother's side with whom the Pupil is to be educated, noticed by the Judge or Inquest: for any Debate arising about him, is commonly determined by the Lords of Session, as it was sometimes done by the Privy-council when that Court stood in Scotland.

This Brief being served and returned to the Chancery, a Nomination of the Tutor is given out which is a Decree of Chancery, and a sufficient Title of Administration, without any Precept thereon to any Judge for giving the Tutor formal Induction in the Office. This Service must be expedite within Year and Day from the Time such an one is capable to be Tutor: which is reckoned either from the Decree of the Pupil's Father, or his own Birth if he

he be a posthumous Child.

Such Confidence doth Law repose in Fathers, that they are Tutors of Law to their own lawfull Children, ^{Callis in the case of King's and Queen's by natural} just. lib. 1. tit. 5. §. 12. without being authorized by a Service. ^{Callis in the case of King's and Queen's by natural} Tho' if the Father be prodigal or poor, or otherwise unfit, it is safer not to meddle without a Sentence, and the Authority of a Judge, (Child being readily suspected in such Cases Stewart's answers to Dirlet. Doubts tit. Tutors. A Father is Tutor to his natural Children only for managing what flow'd to them from himself 17 March 1624. L. Jough contra Tennants of Dungleff. A Husband is Tutor of Law to his Wife that is under Pupilarity, and sub potestate viri Stair just. lib. 1. tit. 4. §. 13.

Part 3 of Tutors Dative

A Tutor Dative is he whom the King appoints by a gift under the Quarter-seal, where the Tutor of Law neglects to serve a Year after he might have done it. So that Sir Geo. Mackenzie is mistaken when (just. lib. 1. tit. 7. §. 5.) he says that this gift passeth under the Privy-seal. A Tutor of Law may even after this jus devolutum by expiring of the Year, be heard to purge his Negligence and oppose a Dative; si modo res sit integra, and no Exception lie against the Tutor of Law 29 June 1632 from contra Elsieck Stewart ibid. & tit. Tutor ratione rei. And a Tutor Dative may be given before the Year expires, when the Question is not betwixt him and a Tutor Testamentary or a Tutor of Law, but betwixt him and another Dative. In which Case the first gift with the first Caution, will be preferred to the last gift with the first profession 9 December 1551. One desiring to be Tutor Dative, gives in a signature to the Exchequer: which before the Union was revised by the Treasurer-Deputy; and now is first revised by the Lord chief Baron, or any of the Barons of Exchequer appointed for that Effect, and then by a Quorum of the Barons. After revising the designed Tutor pays a composition of ten Merks Scots or the like to the King. Then the Signature is cashined or superscribed, not subscribed by the King. Thereafter it is entered in the Register of the Treasury, goes to the Chancery Chamber, where it is written in Latine and English, and from thence to the Quarter-seal. In passing such a Signature, regard is had to the Pupil's Interest, in bestowing the Office on a Person supposed to be most carefull. For which Ends, the Pupil's nearest Friends by the Father and Mother, are to be previously cited, that they may be heard to object against the Person desiring the Office, or to inform concerning the fittest Person to be Tutor; or a Consent under their Hand must be procured Act. 2. Par. 2. fifth 3. Ch. 2. Albert his Majesty may pitch upon whom he will to be Tutor; Re-vised is commonly had to those recommended by the Friends.

A Woman tho' she cannot be served Tutor of Law, may be Tutor Dative: and the Exchequer Court is always in use to give Tutorship Dative to Women Stewart's answers to Dirlet. Doubts tit. Tutors. Tho' my Lord Dirlet in libid. quarrels such a practice, and saith, thinking that they should not be Datives whom the Law doth not trust. Glorin our Custom hath deposed from the civil.