

Tutor cannot in rem alienate. [2] Can a tutor after majority
 alienate a land decree taken in the name of his (curator)
 [3] Tutor for his may be sued after majority without calling the
 principal. 4. Tutor of Factors loco tutoris.

the Tutor's Factor in his own Name, was declared to accrue to the pupil
 20 March 1632 L. Ludgukharin contra L. Haddo. And a Gift of Nomeny
 of a Pupil's Lands granted to the Tutor's Factor, was found to belong to the
 Pupil, and not to exempt the Factor from accounting for the Mailes and
 Dutys; altho these could not have been required from the Superior or a
 Stranger Donatory intruding after Declarator 18 July 1635 Ed
 monstoun contra Edmonstoun. For albeit the Superior or a Stranger
 Donatory would not have been liable for Rents meddled with by them.
 During the Nomeny; yet the Tutor and consequently his Factor, was
 obliged to relieve the Pupil of any Prejudice sustained thereby; because
 he might have compelled the Superior by Diligence to enter the Minor,
 and so have purged the Nomeny; the Omission whereof ought not to
 be prejudicial to the Minor. It is not so clear, if the Rents might have
 repeated from the Tutor or his Factor purchasing the Minor's Ward to
 himself: for that no Law forceth the Superior to dispoise the Minor's
 Ward to himself, and they could not hinder the Effect of it by any le-
 gal Diligence. But yet a Curator having recovered a Decree in his
 own Name, for a Sum owing to the Minor; it was found that the Mi-
 nor could not after his Majority, without the Curator's Concurrence,
 discharge that Sum: seeing possibly the Curator might at Count and Re-
 counting be found superexpended, and so to have had just Reason to intro-
 met with the Minor's Money 13 July 1632 Stoddart contra L. Cockil-
 ferrie.

Factors named or authorized by Tutor or Curators, having general Fac-
 toris are liable to the Minors in the same Manner as their Constituents,
 and have no beneficium divisionis 20 March 1632 L. Ludgukharin contra
 L. Haddo 18 July 1635 Edmonstoun contra Edmonstoun and may be per-
 sued to account at the Minor's Instance without calling the Tutor or
 Curators 24 July 1629 Slewmarr contra Wardlaw. A Factor constituted
 by a Minor and his Curators with a Clause to be accountable for his in-
 trusions, was found liable to do Diligence, as the Curators ought to
 have done for their Exoneration 13 July 1600 Ruthvens contra Wal-
 lace of Inglistoun.

The Duty of Factors appointed by the Lords of Session to manage
 the Estates of Pupils wanting Tutors, is set forth in the proposed Place vide
 infra part. 4. book. 1. chap. tit. 1. sect. 3. sub sect. 2.

Sect. 3.

The Powers of Tutors or Curators.
 Some things both Tutors and Curators are absolutely prohibited to do, others
 Tutors

1 Tutor cannot gift. 2 Tutoring obligation may be dissolved by 3 Tutor
 not for a third party - 172

Tutors cannot do without the Authority of the Lords of Session interposed to
 to the Deed.
 Neither Tutor nor Minor with Consent of their Incitors, can gift away
 the Minor's Effects l. 22. l. 46. §. ult. ff. de admin. et persic. tut. Because
 donare is perdere. Nor can they transact so as to lose or diminish any
 Right belonging to him, nor lay new Burdens, such as Services on his Lands
 or Tenements l. 22. ff. eos. l. 3. §. 3. ff. de reb. cor. qui sub tut. Neither
 can they begin or prosecute a Law Suit that is not well grounded l. 6.
 C. de admin. tut. Nor refer a Debt to the Debtor's Oath, unless there be no
 other possible way of proving the Debt and that this be the only Rem-
 edy left l. 35. pr. ff. de jurisjur. and in a word they cannot in any thing
 make the Minor's Condition worse. No Tutor or Curator can be author in
 remission, by empowering the Minor to do any Deed tending directly to
 the author's Advantage: as to become bound for him to a third party.
 Thus a Bond granted by a Father as principal, and his son who was
 Minor as cautioner, was found null as to the cautionary Obligation of the
 Son: tho he did not directly authorize him but in so far as they both
 subscribed as principle and cautioner in one Bond: because the Father
 could not as his Administrator in Law authorize in remission 7 Dec-
 -ember 1666. McKenzie contra Fairholme. Yea, the Minor having
 obliged himself as cautioner for his Father and another third person
 bound jointly and severally, the cautionary Obligation for the said third
 person was found null, as being to the Father's Behoof 25 July 1667
 inter eadcm. Because surely for one of the Correi debendi, must be under-
 stood to the Behoof of both, in so far as the Obligation was thereby strengthned,
 and the Minor's making payment for one of them freed both. Albeit a Curator
 or administrator in Law might authorize his Minor as cautioner for
 a third person in a separate Bond, wherein the Curator or Administrator was
 not concerned. But a Curator may authorize his Minor's Deed tending im-
 mediately to the Minor's Advantage, tho in consequence it be profitable to the
 Curator himself. Thus a Minor may be authorized by his Curator to enter Heir
 to a person whose Inheritance is not burdensome, and who is Debtor to the Cu-
 -rator l. i. ff. de author. tut. Altho by a consequence of his taking upon him the Du-
 ty of Heir, he becomes Debtor to his Curator. Where a Curator for a Debt due
 by himself caused his Son grant Bond as principal and authorized the Minor
 as cautioner for his Son, the Bond was sustained against the Minor, unless
 the Creditor to whom it was granted had been particips fraudis at the time,
 and known of the Curator's authorizing his Minor to subscribe the Bond for
 his own Liberation from the like Sum 20 February 1672 Carstairs contra
 Moncrieff. For if the Brocard Memo potest auctor esse in rem suam, were
 drawn in consequence to every remote Advantage of Curators, neither could
 Creditors be secured, nor Minors authorized. Tutors or Curators cannot set
 Facks to run longer than their Office Craig Fend. lib. 2. tit. 10. §. 1. pr.
 Heir.