

Actions do but rarely occur, viz. when the Pupil or Minor knowing that there is no balance in the Tutor or Curator's hand think not fit to call him to an account by a direct action. Because a Tutor or Curator when pursued in a Court and reckoning at the Minor's Justice, may get Allowance of what he could recover by his counter-action. It being in arbitrio tutoris utrum compensare an petere velit sumptus in rem pupilli factus l. 1. §. 4. ff. de contrar. tut. act. Thus a Tutor being superexpended it was found, that the Pupil might be deceived in his own Process against the Tutor, to reimburse him of the Oves plus without a distinct Suit at the Tutor's Instance 11 January 1660 Grant contra Grant. Yea so favourable is the alimending of Minors, that Entertainment of a Pupil by his Tutor after expiring of the Tutorship, was admitted as an Article of Defalcation, to compensate pro tanto the Minor's Charge against him for his Administration; without putting the Tutor to the Trouble of suing for it in a separate Action 8 Feb. 1623 Watson contra Watson

Sit. 4.

Of quasi Tutors and Curators
By Quasi Tutors and Curators I mean those improper Tutors and Curators, or persons who besides the Tutors commonly given to Minors of all Conditions for the Management of their Affairs, which may be called ordinary Tutors, sometimes others are named, when the Condition of the Minor deserves it, called for Distinction's sake honorary Tutors. Whose Function is to watch over the Administration of those Tutors who act, and to advise them l. 14. §. 1. ff. de solut. l. 26. §. 1. ff. de test. tut. l. 3. §. 2. ff. de admin. et per. tut. Such honorary Tutors or Curators or Overseers, are not liable at all to the Minor, unless they intromet with his Effects, nor to account for more than they intromet with and the Annualrents thereof from the Time of their Intromission. That they are not liable for things of a different Kind from those meddled with, but only for things of the same Kind 10 June 1665 Swinton contra Notman. In France it is the Custom and Usage, to name a certain Number of Relations of the Minor, or other Persons whose Advice the Tutor is obliged to take, and to govern himself by their Counsel: And it is upon the Deliberations and Counsels of the said Persons, that the Judge examines into the Conduct of the Tutors, and that he allows or disallows their Expences which may be liable to any Exception, Les Loix voiles &c. tom. 1. part. 1. liv. 2. tit. 1. Sect. 2. par. Sect. 3. art. 11.

Another sort of quasi Tutors and Curators, are those who without a Lawfull

I distinguish Tutors in some Things, but not in all, of Hope I consider two sorts. 1.

Lawfull Call do meddle in the Minors Affairs as Tutors or Curators whence they are termed Protutors or Procurators, whether by Name or knew not themselves to be Tutors or Curators. These in Justice before the Year 1665 were not liable to all the Duties of Tutors and Curators, and differed only from ordinary negotiorum gestores in being accountable for Annualrent of the Minor's Estate, on form to in Context of this for Promissions. But according to the Civil Law they are liable in all Points as Tutors and Curators l. pen. l. 1. §. pen. l. ult. ff. de eo qui pro tut. proce. cur. and so are they now with us, bet. al. Dec. 10. 1665. They are liable in solidum to the Minor for Intromissions and Omissions and to exact Diligence. Thus two of five Tutors or Curators, without the Consent of twenty and Severally or any Curator, having acted in some Cause liable for Intromission and Omission 17 Feb. 1672 27. 5. or 10. Scot. Which must have been as Protutors, because they had no active Part, to pursue or take Payment as Tutors, they not being the major Part of the Tutor's number. A Governor to a Nobleman who was Tutor in his absence, and the one appointed by the Minor's Parents or Tutors or Curators out of the Minor himself without any express Agreement as to his Service or Office, having under the Title of Governor intromitted with the Minor's Money, was found liable not only for his actual Intromission, but to answer for the Minor's whole Expence, the Plaintiff's Proof being reserved to the Lords, 20 Decemb. 1677 Cockburn contra V. de Jarr.

There is no Place for vicarious Intromission if Secus are confined to the deceased 28 July 1626 Servants contra Servants, 11. 3. Tit. 9. §. 2. But there may be Protutors or Procurators, even where Tutors or Curators are authorized id. Novemb. 1671 Case contra Elies. The Reason of the Disparity perhaps is, because the passive Title of Protutor or Procurator is not so odious and extensive as vicarious Intromission: In so far as it doth not subject to all the Minor's Debts, but only to exact Diligence in an Office unwarrantably assumed, consequently there may be Ground thus to restrict the latter and not the former. As Protutors and Procurators are liable as Tutors and Curators: So there is a Counteraction competent to them against the Minor, to whom they supplied the Office of Tutor or Curator, for Expences and Damages l. ult. ff. de eo qui pro tut. proce. cur.

But tho' Protutors and Procurators agree with Tutors and Curators in many Things, they differ in these, so Protutors may be pursued within the Years of Impillarity l. 1. §. 3. ff. cod. And Procurators may be called to Account before Majority. 2. Protutors cannot effectually alienate any Thing belonging to the Pupil l. 2. ff. cod. Nor can his Debtor safely pay to a Protutor l. 2. ff. de solut. So that Protutors and Procurators archive Effect Tutors and Curators passive, but not active.