

S E C T. III.

What a Minor can do without Consent of Curators.

1566. February 12. HEIRS OF ARDROSS *against* DISHINGTON.

No 47.
A minor may warn, in order to removing, without consent of curators.

IN the action of removing, moved by the Heirs of Ardross against Thomas Dishington, their father's brother, it was *excepted*, That the time of the warning the pursuers were minors, and warned not by the authority of their tutors; and the said Thomas was tutor testamentar, and so giving that they had warned lawfully, he could not be removed; because he, as lawful administrator and tutor, occupied the said lands, from which he was warned to flit. It was *replied*, That the said Thomas, before he was of lawful age to be tutor, intended an action of bastardy against the pupils, and thereafter intended an action upon the hail pupils' heritage; and, therefore, he should have no privilege of the said office, nor he could ever be tutor. It was *answered*, That, howbeit he had so done, he ought not to have been removed from his office, without a decree of a Judge; *L. 4. Cod. In quibus casibus tutorem, vel curatorem habenti tutor vel curator dari potest. L. 27. § 1. D. De Testamentaria Tutela.* It was found by the LORDS, that minors might make warnings without consent of tutors, because it was to their profit; also it was found, that a tutor being nominated in testament, or otherwise, intending actions either of bastardy or gear against the pupils, before that he accept of the office of tutorry, he might never be tutor thereafter; and so the said pursuer was decerned never to have been a tutor to the said pupils, for the reasons foresaid.

Fol. Dic. v. 1. p. 576. Maitland, MS. p. 210.

No 48.

1602. March 11. LAIRD OF AIRTH *against* LAIRD OF ———.

IN a suspension betwixt the Laird of Airth and the Laird of ———, a bond was made null, as made by the Laird of Airth, being minor, as having curators; and where it was opposed, that the act of curatory was null and imperfect, seeing the Lords had chosen eight, whereof one, *viz.* Lord Fleming, had neither made faith, nor found caution, the LORDS repelled the exception, and found the act of curatory perfect.

Kerse, MS. fol. 146.