

1675. February 5. FULLERTON against BOYNE.

The Laird of Towie having nominated his Lady tutor to his only daughter and heir, and in case of her death or marriage, Colonel Fullerton, who was accountable to certain overseers yearly; the Lady having now married the Laird of Boyne, the Colonel pursues the Lady and her husband to deliver to him the pupil, who alleged that the pupil being a daughter, might be most conveniently educated with her mother, and that the Lords might and have frequently appointed the residence of the pupil not to be with the tutor, because the mother offered to entertain the pupil *gratis*, which the tutor could not refuse, unless he would likewise entertain her *gratis*. It was answered, *non relevat*, because *tutor datur personæ*, his chief duty and trust is the person of the pupil, her health, entertainment, and education, and she being of an opulent estate, her mother's offer to entertain her *gratis* could not alter the case, and she being now married to a second husband, had no more power of herself, and the pupil might by the influence of her or her husband be inconveniently matched.

The Lords repelled the defence as not relevant, and ordained the pupil to be delivered to the tutor.

Stair, v. 2. p. 317.

* * * This case is reported by Dirleton :

The deceased Laird of Towie having named his relict, now Lady Boyne, tutrix to his daughter, and in case of her marriage, Colonel Fullerton; the said Colonel pursued the Laird of Boyne for delivery of the said pupil. It was alleged, that her mother and her husband would entertain the pupil *gratis*. It was answered, that Boyne being her stepfather, and having no other relation, but that of *vitricus*, which in law is not favoured, his offer to entertain is not relevant against the tutor, who has the trust both of the pupil's person and estate; and it is to be presumed, that the offer of the stepfather is upon a design upon the pupil, her person and fortune, and that the case had been determined *in terminis*, 4th July, 1629, Langshaw against Mure, No. 108. p. 16252.

The Lords repelled the defence, and ordained the pupil to be delivered to the tutor.

Reporter, *Strathurd.*

Clerk, *Gibson.*

Dirleton, No. 242. p. 116.

1675. December 10. SCOT against KENNEDY.

A person disposing his means to pupils or minors, may so qualify his gift, as the means shall be administered by the persons named in his disposition, and yet the

No. 184.

A tutor-testamentary was preferred to the custody of his pupil, an heiress, in competition with her mother, married to a second husband, although she offered to entertain her *gratis*.

No. 185.