

No. 215. master of the pupil's writs, the pursuer was not obliged to debate what right his grand-father had, but he ought to be put in his grand-father's possession by the tutor, seeing the tutor cannot allege, that he was excluded by any from the possession *via juris*. The Lords found, that the pupil was not obliged to debate, what was his grand-father's title, but that he ought to be reponed to the possession of his grand-father, the time of his death, continued by the tutor and his relict since his death, reserving to the relict, to recover the possession by virtue of her title, as accords of the law.

*P. Falconer, No. 110. p. 77.*

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1686. *January.* THOIRS *against* LAIRD TOLQUHOUN.

No. 216. In a reduction at the instance of Sir David Thoirs, advocate, against the Laird of Tolquhoun, of a disposition granted by John Forbes, Sir David's author, to Tolquhoun, of the lands of Craighinty; the Lords found, that Tolquhoun being pro-tutor to John Forbes, that the said John Forbes and Sir David, as having right from him, ought to have the benefit of the compositions of the rights acquired by Tolquhoun of his pupil's estate during the time of his tutory.

*Sir P. Home MS. v. 2. No. 773.*

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1686. *January.* M'DOUGAL *against* APPLECROSS.

No. 217. In a reduction and improbation at the instance of Sir Andrew M'Dougal, as having right to an apprising against my Lord Lovat, compearance being made for Applecross, who had right from the tutor of Lovat to a prior apprising.

It was alleged for the pursuer, that Applecross's apprisings having come in the person of the tutor of Lovat during the tutory, it must be presumed acquired with the pupil's means, and for his behoof.

Answered for the defender: The allegiance of *intus habes*, or of acquiring to the minor's behoof, is only competent to the pupil and his heirs, and not to a creditor or successor by diligence; and it is only competent against the tutor and his heirs, and not to a creditor or successor by diligence; and it is only competent against the tutor or his heirs, and not against his singular successors in lands and real rights.

Replied for the pursuer: Rights in the person of the debtor are affectable by the comprising. It was so found in the case of James Cleland and Lamington, against a singular successor in personal rights; and there is the same reason why the like should hold in real rights.

The Lords sustained the allegiance and reply for the pursuer, and found, that the same was competent to him against a tutor's singular successor *ante redditas rationes*; and found, that though it did appear in the event of counting, that the tutor had counted *qua talis*, without claiming allowance for the apprising acquired