

No. 12. 1740, Feb. 27. THE TUTOR OF LAW OF EDERLINE, &c. *Supplicants.*

THE Lords found that they could not authorize the petitioner to reassume the administration of the fatuous person's affairs, leaving him to do as he thinks meet as to the other point, *i. e.* the service. What moved the President and Drummore was the former decret of declarator finding the tutory expired void and null; and Drummore proposed to add to the interlocutor, "in respect of the decret of declarator," which I own I opposed, because I doubted that without those strong words in the declarator, whether the tutory could revive upon Ederline relapsing into his furiosity, not only for the reasons mentioned in the petition, but also that by the stile of the letters of tutory from the Chancery, which is the law in this case, the tutory is to endure *donec Deus clementia sua sibi morte vel convalescentia providerit*

No. 13. 1740, Nov. 7. YOUNG *against* WATSON.

THE Lords waved to determine whether a nomination of two tutors would subsist if one did not accept though not named jointly, because it was told us that both would accept; therefore remitted bill and answers to the Ordinary.

No. 14. 1742, June 16. SIR J. DALRYMPLE, &c. *against* MRS SOMMERVELL.

MR HUGH MURRAY named six tutors and curators to his daughter, of whom his Lady to be *sine qua non*, and in case of her death or incapacity Sir James Dalrymple to be *sine quo non*, and in case of his death or incapacity, the tutory to subsist in the other tutors accepting. The widow was advised, that as these tutors were free from omissions, a different management would be better for the pupil her daughter in her then circumstances, and, as she said, was told by Sir James, that if she would renounce application should be forthwith made for a factor; she therefore renounced the office. Sir James accordingly applied by petition for a factor, to which Lord Drummore and Sir John Baird, two of the tutors, put in answers, showing that though the relict had renounced, that this nomination was not fallen, because though only her death or incapacity were mentioned, yet that must be understood also to comprehend the case of her not acceptance, and the other tutors, (even Sir James Dalrymple among the rest) were willing to accept. Then the widow gave in answers telling the fact, that she believed the tutory was fallen through her not acceptance, and which she refused to accept for the pupil's benefit and the better management of her affairs, though, if the tutory could subsist without her, she would in that case notwithstanding of her renunciation yet accept. The President was clear that the nomination still subsisted in the other tutors. Arniston seemed to doubt much and argued against its subsisting, but when it came to the question he did not vote. However it carried that the nomination was fallen; and therefore remitted to the Ordinary on the bills to hear parties as to the nomination of a factor and to report, 23d February. 16th June, The Lords altered, and found the nomination not fallen.