No 16. ters, and amicable compositors are all but one, and under one form and manner of proceeding, but as to the word 'arbitrator,' *non est de jure*, but *a commentatoribus excogitatum*, and as to the consent of parties, and their homologation unto the minor, they might not do that in prejudice of the law, *quia jus commune privatorum pactionibus tolli non potest.* After long reasoning and advising, it was pronounced by the President, by reason of the equality of voting among the rest of the Lords, the matter stood, that the foresaid submission was lawful, notwithstanding of the foresaid alleged laws.

Fol. Dic. v. 1. *p.* 576. *Colvil, MS. p.* 332.

1592. *January* 3. ELLIOT *against* ELLIOT.

No 17.
Dispensation with less age by the King, makes not a man habile to be a tutor; but the nearest of kin, of perfect age, must be served; and the minor arriving at that age, then will obtain his own place.

GILBERT ELLIOT of the Stobs pursued the Sheriff of Teviotdale and William Elliot his own brother's son, to hear and see the said Sheriff decerned to expede the service of the said Gilbert's brieves, as next and lawful tutor to Elliot, his brother's son and heir. It was *alleged* by the Sheriff, That he could not be decerned to expede to the said Gilbert's service, because the said William Elliot being father-brother to the pupil, and so nearer of kin to the said bairn than the said Gilbert, who was only goodsir-brother to him, and the said William having obtained his Majesty's dispensation of his less age, he behoved to serve the said William, and prefer him to the said Gilbert. It was *answered*, That albeit the dispensation of less age granted by his Majesty to the said William being within age, gave him a liberty to execute his own proper affairs, yet he could not make him able to be an administrator of other men's affairs; especially seeing the said William had raised a summons to the said Gilbert, because he had not summoned the said William's tutors and curators, and so had not confest himself to be William's heir. It was reasoned by some of the LORDS, that likeas the King might grant by his dispensation, power to a minor of 18 years of age, or above, to have free administration of his own goods, so may he by his dispensation give liberty to any man who had exceeded the age of 22, and was within three years or less of 25 years, to be tutor. THE LORDS resolved that the dispensation could not make him able to be tutor, while he were 25 years complete, and at that time the tutory of Gilbert would expire, and the said William would have place to acclaim his own place and right.

Fol. Dic. v. 1. *p.* 576. *Haddington, MS. No* 81.

No 18.
Found in conformity with the above.

1593. *February.* WALTER KEIR *against* L. of LUSS.

IN the action persewit be Walter Keir against the Laird of Luss, and the heirs female of the last Laird of Luss, it was found, that the King's dispensation

would not give power to ane inquest to serve ane man tutour befoir he were 25 yeirs of age, and that the confessione of the dispensation usit by the pairtie maid the service and tutorie null. No 18.

Fol. Dic. v. 1. p. 576. Haddington, MS. No 355.

1593. *February* 21. FORROUS *against* GOURLEY and STEVENSON.

No 19.

A MINOR *majorennitate proximus* offering himself as cautioner to the fisk, cannot enjoy his privilege to his Majesty's prejudice (the fisk being also privileged) upon allegeance that he was minor *curatores habens*.

Fol. Dic. v. 1. p. 576. Haddington, MS.

1620. *February* 10. LORD EGLINTON *against* His VASSALS. No 20.

INCIDENT sustained in favours of a minor for his own evidents.

Kerse, MS. fol. 146.

1623. *January* 16. MAITLAND *against* CASCHOGILL.

MAITLAND of Eccles pursued Caschogill, as donatar to his ward, to pay him for his entertainment since the year 1606, to the year 1618. It was *excepted* by the defender, He should be assoilzied, because the pursuer was all that time entertained by his mother, which he referred to his oath? and that he, by paction with the pursuer's mother, had allowed her yearly some bolls of meal and some money to entertain her son, pursuer, which she had accepted and done, which he referred to her oath. It was *replied*, That the probation could not divide, but the whole exception behoved to be referred to the pursuer's oath, neither could he be urged to swear, being minor. THE LORDS found, the exception relevant and probable on the several members, by the oaths of the mother and son, and that he, therefore, albeit minor, might give his oath *super facto proprio*, especially being eighteen years of age.

No 21.
Found that a minor might make oath *super facto proprio*.

Fol. Dic. v. 1. p. 575. Haddington, MS. No 2723.