

1624. November 19. RAMSAY against HAY.

No. 89.

Curators chosen by one within pupillarity, though he were *pubertati proximus*, are not lawfully chosen, and so may be cassed, and the act of curatory reduced.

Spottiswood, p. 334.

* * Durie reports this case :

In a suspension of charges raised upon a decree-arbitral, at the instance of one Ramsay *contra* Hay, the Lords found the submission and decree-arbitral null, in the same suspension, summarily, without reduction; because the submission was for the right of tutory of a minor betwixt two tutors; the one alleging himself to be tutor lawful, and the other testamentary; which right was submitted by them, and what satisfaction either of them should do to others for their rights; which the Lords found was not lawful to submit: And sicklike they found the decree null, because the Judges had decerned the one tutor to give to the other, for giving over of his right, some of the defunct's gear, which pertained to the minors, whose tutory was controverted; and so it was not lawful to give away the goods pertaining to the pupils for acquiring of the said right of tutory, by any of them, seeing thereby the pupils were evidently damnified.

Act. Lermonth.

Clerk, Gibson.

Durie, p. 149.

1625. June 22. MARQUIS of HAMILTON and His CURATORS.

No. 90.

Found, That minors' curators may be chosen by a procurator in their absence.

Kerse MS. fol. 150.

1625. July 30. LA. STONYHILL against HER SON.

No. 91.

The Lady Stonyhill, relict of Sir Robert Dobie, pursues registration of her contract of marriage, against her son, as heir to his father, and the defender compearing and alleging, that she being left tutrix testamentary by her husband, to the defender *sine qua non*, she could not pursue her own pupil, her son, whom of law she ought to defend, until the time she had intented a pursuit, to hear curators given to him, to defend him; which allegiance was repelled, and the pursuit was sustained at her instance; albeit it was also alleged, that she had accepted a tutory, by subscribing of sundry writs, as tutrix to the defender; which was also repelled, in respect that she renounced the office of tutory, and that the pupil had

Tutrix *sine qua non.*