

It is to be here considered, that of the law *quamdiu speratur tutela testamentaria non est locus dativæ vel legitimæ*, also *Vitricus de jure non datur tutor suo privigno*; and this tutor dative, before the tutory dative, had married the mother of this pupil, to whom he acclaimed to be tutor. Also the Lords found, that the Laird of Rowallan, who was father to the tutor dative, being one of the tutors testamentars, who having renounced to be tutor by his renunciation subscribed by him, and once produced before the Lords, albeit that thereafter he took up the same and desired to be admitted to the tutory with the rest of the testamentars, alleging that he might repent and return to the office; yet in respect of the said renunciation, the Lords found that he ought not to be tutor; but only the rest of the testamentars, and that he could not come back again.

Act. Hope.

Alt. Scot.

Clerk, Scot.

*Durie, p. 304.*

No. 93.

1627. *November 20.* ADAM and HIS CURATORS *against* FAIRHOLM.

In a removing pursued by Adam and his curators against Fairholm, the defender defending himself by a tack, set by a minor with consent of his curators to him of the lands libelled; the Lords repelled the exception, in respect that the tack foresaid was set and consented to by curators, chosen by the minor since the first act of curatory was made, which first curators had not consented to that tack, and who being lawfully and orderly removed and discharged by a competent Judge; and which not being done, there could no other second act of curatory be made, nor no other curators of new again could be thereafter given to him; and therefore the said tack being subscribed by another new chosen curator, and not consented unto by the curators chosen by the first act; the Lords repelled the exception, and found the tack null, as wanting the consent of the first chosen curators standing, unremoved; but this was received *ope replica*, without necessity of reduction, against a tack clad with possession, and consented to by curators, conform to an act of curatory standing unreduced.

Clerk, Hay.

*Durie, p. 314.*

No. 94.

Minor cannot name curators twice.

1627. *July.* NASMITH *against* NASMITH.

Found, That a tutor (*fnita tutela*) may buy lands, or comprise the minor's monies, where he had led comprisings of the legal reversion before.

*Kerse MS. p. 150.*

No. 95.