provided, during not only the pupillarity, but the minority of his son: and nevertheless his son, having chosen curators after his pupillarity, there was a competition betwixt the said curators, and the person appointed by the father to administrate.

The Lords found, That the son, as to his person, was not *in potestate* of either of the said competing curators; seeing *curator non datur personæ sed rebus.* And, as to any other estate belonging to the minor, any other way than by the provision of his father, the same was to be governed by the advice of the curator, named and chosen by himself.

But the Lords demurred as to that question,—*viz.* Whether the father might affect the right granted by himself, with the quality and provision foresaid, that the person named by him, should have administration of the estate disponed by him. And some were of the opinion, that there is a difference betwixt a stranger and a father; in respect strangers are not obliged to give; and what they are pleased to give, they may affect and qualify their right thereof, *sub modo*, and with what provisions they think fit: whereas a father has a duty lying upon him in nature, to provide his children; and, by the law, he may name tutors to his children; but, after pupillarity, he cannot put them under the power of curators without their own consent: and, if this practice should be allowed, there should hereafter be no election of curators. They did also consider, that the right granted by the father was in effect *donatio mortis causa;* seeing the father retained possession, and a power to revoke. And it seemed, that as the father could not in testament make curators, so he could not do the same by a legacy, or any such donation *mortis causa.*

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1676. *February* 8. ——— *against* ———.

The Lords found, That when creditors did compear in adjudications, not being called, they ought to be admitted with that quality, that since the course of the adjudger is stopped by their compearance, the adjudger shall be in the same case as to any adjudication at their instance, as if both adjudications were within year and day.

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1676. *February* 24. ——— *against* ———.

In a pursuit against a minor, it was ALLEGED, *Quod non tenetur placitare*; because minor. Whereupon there did arise two questions, *viz.* 1*mo.* Whether the said exception, being a dilator, ought to be verified *instanter?* As to which, it was found by the Lords, That minority, being in fact, could not be verified *instanter.*

2*do.* It being REPLIED, That the defender was major, which was offered to be proven, and a conjunct probation being desired by the defender, it was nevertheless found by the Lords, That the allegeance of minority, being elided by the

said reply of majority, which only was admitted, the pursuer ought to be allowed to prove his reply, without conjunct probation to the contrary.

Act. Sir David Falconer. *Alteri,* ————. Hamilton, *Clerk.*—*In præsentia.*

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1676. *June 22.* LAMINGTOUN *against* RAPLOCH.

A SUSPENSION being craved, upon that reason,—That the charger had been curator, and, *ante redditas rationes,* could not charge him with any debt:

It was ANSWERED, That the complainer being to be married, he desired the charger and some others to be his curators, to the effect they might authorise him to contract; and the charger had never intromitted.

Some of the Lords were of opinion, that, if it could be verified by the complainer's oath, that the charger had no intromission, and that these that intromitted were responsible; in which case, by the civil law, there is no *actio tutelæ,* but against those who intromitted; the others who had not intromitted, being only liable *in subsidium,* the said reason should not be sustained. But it being pretended, that, by our custom, all tutors and curators are liable, whether they intromit or not, without distinction; and that pupils may take themselves to any of them; though it was not made appear that the said point was ever debated or decided; yet the Lords ordained the complainer to give in a charge against the curator; and the count to be discussed upon the bill.

Glendoich, *Reporter.*

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1676. *July 5.* Dame MARION LESLY *against* Sir JOHN FLETCHER.

SIR John Fletcher, being obliged by contract of marriage, to provide Dame Marion Lesly, his wife of a second marriage, to the liferent of a sum of £10,000, did thereafter infeft her in the lands of Gilchristoun, being of more value and of a greater rent: whereupon she having obtained a decreet against the tenants, the Lords found her right, being granted *stante matrimonio,* and thereafter revoked, null; in so far as it exceeded the provision in her contract of marriage: and sustained her decreet only effeiring thereto: and ordained her to be liable for the superplus, until the said sum of £10,000 should be employed for her liferent, conform to her contract of marriage.

Forret, *Reporter.* Mr Thomas Hay, *Clerk.*

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1676. *July 5.* SIR RICHARD MAITLAND of PITRICHIE *against* the LAIRD of GEIGHT.

SIR Richard Maitland of Pitrichie, having obtained a gift of recognition of