

found, that the custody of the pupil ought to appertain to the donatar, and so ordained the pupil to be delivered to the donatrix. No. 61.

Colvil MS. p. 394.

1586. November.

LEARMONTH against LESLIE.

Mr. John Learmonth, son to Laird of Balcomie, pursued Euphan Leslie his mother, to hear and see a letter of tack of his lands called Northbardie, as done by him in his minority to his great hurt and lesion, the said land being worth 12 chalders victual, and set for £.40. of duty. The first part of the reason of the summons was, that the consent of his curators was not duly interponed thereto, because they consented not presently, et in ipso actu negotii; but by a long space afterward, and of the law, in lege 9, § 5. D. De auctoritate et consensu tutorum vel curatorum ut statim in ipso negotio presens debet auctor fieri; and so of the law the consent of the tutor ought to have been interponed in ipso actu negotii et non ex intervallo. The Lords, after long reasoning, found the first part of the reasons of the summons founded upon that head, that the consent of the curators was *ex intervallo* interponed was not relevant, and that it might stand that the consent of the curators might follow *ex intervallo*.

Colvil MS. p. 410.

1589. March.

KENNEDY against ———.

There was letters of horning produced against the Earl of Cassillis and Thomas Kennedy, his tutor; and because the executions which were against the tutors were not upon the back of the letters, nor yet registered in the Sheriff's books, according to the act of Parliament, the Lords found the same to be of none avail.

Colvil MS. p. 441.

1589. March.

DICK against NEAREST AGNATES.

There was a woman that deceased in Edinburgh, called Dick, who being the spouse of B. R. had certain tenements of land in heritage; and, after decease, she left some of her nearest kinsmen and agnates to be tutors testamentars to her bairns and their heritages. It was alleged by them who were nearest agnates of the father's side, that they might be preferred, and she could have no place to nominate in their prejudice, but, according to the laws and practick of the realm, the nearest of kin of the father's side should be admitted tutors. It was answered,

No. 62.

The authority and consent of curators to the minor's contracting may be interponed, (contrary to the common law) *etiam ex intervallo*.

No. 63.

No. 64.

A mother having heritage may name tutor to her children, though in prejudice of the nearest agnates.