1780. *August* 8.

No 45.
A female just 12 years of age; to whom her mother and several other persons had, by her father, been named curators,—at liberty, in opposition to the latter, to accompany her mother to a foreign country, with the purpose of residing there.

Robert Graham, and Others, *against* Elizabeth Graham.

Mr Graham of Gartmore appointed, as tutors and curators to his children, who were all daughters, "for managing and governing their estate, real and personal, and directing and overseeing the care of their persons and education," Robert Graham, his brother, his own wife, the mother of the children, and several other persons.

For some years after his death, the children lived in family with their mother; till, upon the near prospect of her marriage to a gentleman who resided at Lisbon, it was thought proper that they should be placed at a boarding-school in Edinburgh. The eldest of them, Elisabeth, was then drawing near to the legal age of puberty, that of 12 years. On the fifth day after she had attained it, she had addressed a letter to her guardians, informing them of her resolution to accompany her mother, and not to go to the boarding-school, adding, that by law she was now become mistress of her own person.

A majority of the guardians, alarmed at this message, presented a bill of suspension to the Court, praying "for an interdict against Miss Graham from going, and against her mother, and every other person, from carrying her out of its jurisdiction."

Pleaded for the suspenders, Experience shows, that in order to render the general rules relative to the age of puberty, which our law has borrowed from that of the Romans, consistent in this northern climate with reason and propriety, these rules must suffer such a controul and limitation as are suited to the circumstances which really prevail. It is a power inherent in the supreme Court to regulate their application, whether with respect to the marriage or place of residence of minors. Of the former, the case of Niven *contra* Cuming, March 6. 1688, is an example. Of the latter, it does not appear that circumstances so extraordinary as the present have before occurred to produce one. No child of twelve years of age has till now insisted on being carried away from her native to a foreign country.

But the same authority has been exercised by the Court, on the same principle, in cases analogous to the present. If it is supposed, that minors, immediately after puberty, have the disposal of their own persons, it is equally admitted, that, when not prevented by the father's nomination, they may chuse their own curators. Yet in the case of Bower, July 29. 1750, No 12. p. 8910, in which a young man of fourteen years of age, had, by some Popish relations, been carried over to the Scots College at Paris, where a scheme was formed by them of getting the management of his estate by his nomination of them as his curators, the Court authorised the nearest agnate, who had been his tutor of law, to recover the person of the minor, and to bestow such expense out of the minor's funds as might be necessary for that purpose. The principle on which the Court interfered was, according to the remark of the learned

collector, " That wherever there is a suspicion of undue management, or of imposition on the minor, it is competent for the Court, *ex officio*, to prevent undue influence, to sequestrate the person of the minor for some time, as in the case of Sir Robert Gordon, No 10. p. 8910., observed by Forbes." In this case, indeed, not only the minor's power of nominating his own curators was controuled by the Court, but they gave directions also for regulating the place of his residence. No 45.

Though the law has fixed the age of puberty at an early period, and in general has annexed to it a power in minors of disposing of their own persons; yet, when their safety or advantage requires the interposition of the Court in the controul of this power, it is not to be with-held. In the present instance, the removal of a young lady to a distant and a foreign country, would be attended with such consequences as call for the protection of the Court to the unexperienced person who is thus threatened with them. This application, the suspenders are more particularly entitled to make, that besides being along with the mother, nominated tutors and curators by the father, they have specially conferred on them " the care of his children's persons and education;" and thus possess all the authority which he himself would have if he were in life.

Answered, There is no doubt in our law at what period pupillarity ends and minority begins. Nor is the maxim less unquestionable, that " *tutor datur personæ, curator rei*;" whence arises the free disposal of the persons of minors by themselves in marriage, and surely not less the free choice of their place of residence, which is of such inferior importance, and so evidently implied in the former. A pupil indeed has no person in a legal sense, and tutors must act for him. But by the common law, and prior to the statute 1696, as soon as the years of pupillarity were past, minors were free to act for themselves; nor could their fathers, or any other person, impose curators on them, except as a condition of a gift proceeding from themselves; and then the administration of these curators was confined to the special subject granted; so far were they from obtaining any controul over the persons of minors, December 10. 1675, Scot *contra* Kennedy, *voce* TUTOR AND PUPIL. Neither does that statute alter the nature of curatory; it only gives to the father the power of nominating curators as well as tutors. The persons of minors are still exempt as before from the curatorial authority, and in particular with respect to their place of residence, July 25. 1741, Marshal *contra* Macdowal, No 41. p. 8930. The case of Bower, No 12. p. 8910., reported by the same collector, proceeded, notwithstanding the opinion of that learned judge, altogether upon the statues 1661 and 1700 relative to Popery. Nor does that of Niven afford any instance of controul upon the choice of a minor in marriage, but of the punishment of a crime, and the redress of a wrong.

This minor then possesses the right of disposing of her person as she pleases, and, in particular, by chusing her place of residence. Her curators are not entitled, from any notions of expediency, to controul her. Yet were it otherwise, it would still be incumbent on them to show that there is any impropriety in a daughter accompanying, or living and receiving her education under the

No 45. care and protection of an affectionate mother, whose character is irreproachable.

Observed on the Bench, The law of Scotland has not conferred on curators that controuling power over the persons of minors which is here claimed; and the *nobile officium* of the Court ought never to be at variance with the law. Indeed the measure of which these curators complain, appears not to be attended with any real hazard to the young lady.

THE LORDS "repelled the reasons of suspension, and removed the interdict."

To this judgment the Court adhered, on advising a reclaiming petition and answers.

Reporter, *Lord Braxfield.* For the Suspenders, *Solicitor-General Murray, Ilay Campbell.* Alt. *Crosbie.* Clerk, *Tait.*

Fol. Dic. v. 4. *p.* 9. *Fac. Col. No* 123. *p.* 226.

*** The case of Niven alluded to in the above report, was not a decision of the Court of Session, but of the Privy Council. It is thus sated by Lord Fountainhall, v. 1. p. 501.

One Niven, a musician in Inverness, is pursued for deceiving one of his scholars, a lass of 12 years old, called Cumming, a ministers daughter, and marrying her, and getting a country minister to do it, by suborning one to call himself her brother, and to assert to the minister, that he consented. This being an abominable imposture, and theft, and a perfidious treachery, having a complication of many villanies in it, he was sentenced for an example, to stand at the pillory with his ear nailed to the Tron, and then to be banished; which was done.

The Privy Council also declared the marriage void and null *ab initio*, as procured by fraud, without sending them to the Commissary-Court; and farther, declared the maid's reputation to be untainted by this fact.

This present Pope Innocent XI. has made a very just rule, discharging any man to teach music, or other arts to women in Rome, and allows them only to be taught by some of their own sex.

1783. *July* 26.

JOSEPH SCOFFIER *against* WILLIAM READ and SAMUEL READ, his father, and administrator in law.

No 46.
A minor drew bills on his father in London, in favour of a haberdasher in Edinburgh, who advanced some cash on them, and furnished

WILLIAM READ, the son of a merchant in London, in the sixteenth year of his age, was bound apprentice to Mr Hay, surgeon in Edinburgh, who had directions to advance every thing necessary for his subsistence and education.

Soon after his arrival in Scotland, Mr Read became debtor to Joseph Scoffier, haberdasher in Edinburgh, in the sum of L. 50 Sterling, partly on account of money advanced by Mr Scoffier, and partly for goods furnished by him. For