

Curators - unless a father himself be given
to the child, he shall be the father's Curator = 2 years from coming
of age, unless he be chosen by the father before the child's coming
of age, in which case he shall be the father's Curator, to prevent
any undue influence

from her Father, was not allowed to chuse other Curators without his Consent: Curators ad lites were given her for clearing Accopts of the Father's gntromissions with her Rents 14 July 1681 Bartholomew contra Bartholomew. Husband are Curators of Law to their Wives. But in this a Wife is in a different Case from an ordinary Minor, that his Curator's Office is at an End, when the Child is 21 Years old; whereas Curatorship over a Wife, dissolves only with the Marriage. Again she cannot oblige herself for sums, even with her Husband's Consent; but cannot grant Rights to her Husband, or to any other for his behoof; if ratified in his Absence before a Judge.

Curators elected are those whom the Minor chuses for himself, by way of process at his Instance. The Lords of Session are in Use to sequester a Pupil some Days before his pupillarity expires to prevent his being influenced to his prejudice in the Election of his Curators. But they refused upon Application of Tutor appointed by the Pupil's Father in the Terms of the Act of Parliament 1696 to continue Curators, to sequester their Pupil any Days before expiration of the Tutorship; unless these would positively renounce to be Curators; 11 July 1710 Tutor of Gordon of Gordon's town Supplicants. Because otherwise the Minor's Choice was prevented by the Father's Nomination. In a process at the Suit of a Minor for chusing his Curators, some two at least of the nearest of the Father's or Mother's Friends, are cited upon nine Days Warning, and all others having Interest generally at the Market-Cross of the head Burgh of the Jurisdiction where the Minor's Lands lie, or if he have no Lands, at the head Burgh of the District where he dwells; to compare before the Minor's Judge ordinary to hear and see

jurisdiction of pupil
be from chusing
Curators

jurisdiction of Curators
decerned when
taken when
in chusing

Curators decerned to him Act. 35. par. 6. Q. M. So that Sir G. Mckenzie is understood to have taken when (Inst. lib. 1. tit. 7. §. 7) he says that a Minor may chuse his Curators before any Judge. The Minor, at the Day gives in a List of those he desires for his Curators; against which the Friends are allowed to object and shew Cause why any of the Persons named ought not to be authorized. But if no Objection be made, or no sufficient Objection, and the Persons named be willing to accept; they must subscribe their Acceptance upon the signed Nomination given in by the Minor, make Faith, and find Caution de fidei administratione, and make Inventories of the Writs and Estate: upon all which the Clerk extracts an Act of Curatorship Act. 2. par. 2. Sep. 3. Ch. 2. which is a Kind of solemn Confirmation of the Minor's Choice sine inquisitione. Minors cannot be forced directly to take Curators ad negotia. Because Law (Act. 35. par. 6. Q. M.) orders the giving of Curators to Minors desiring them. But may be compelled to it indirectly, in so far

A as they may refuse to pay to them till they be authorized with Curators. It is in the Option of the Minor whom to chuse for his Curators, and how many of them to make a Quorum; to name ~~any~~ one or more of them sine quo or sine quibus non; and to adjoin any Condition he thinks fit, if it be for his Advantage. But he cannot effectually chuse them with this Condition, that they shall not be liable for Omissions 1 Feb. 1710 Rankin alias Little contra Johnston and Gordon's son. So that I do not see what ground the L. Stair (Inst. lib. 1. tit. 8. §. 36. circa fin) had to say, that Curators expressly chosen with a Quorum, and with this Condition,

Condition,

Minor may chuse Curators by proxy - but the Tutor's name
is not allowed - unless sign of the Tutor's name

Condition, that they should be obliged only for Deeds whereunto they consented, and be free of Omissions, were so approved by the Lords during their Office. A Minor may even chuse Curators by proxy in his Absence: so be the Procurator or Commission express their Names Hope tit. Curators. Stair Inst. lib. 1. tit. 6. §. 30. But they are not to be elected till the Tutorship expires; and if they be, the Act of Curatorship is null 19 December 1634 Campbell contra Chalmers. Minors formerly were so much at Liberty in the Election of Curators, that they could not be hindered from it, by the Nomination of a Tutor appointed to continue till their Arrival at perfect Age 6 February 1633 Hopper contra Hamilton 10 December 1675 Kennedy contra Wallace and Sect. but now a Father may name both Tutor and Curators to his Children. which leads me to speak of the latter sort of Curators.

Curators nominated are those named by a Father in Lige pousie to his Children whom he may appoint with this Quality, that they shall not be liable for Omissions, or insolidum Act. 8. Sep. 6. par. 4. which Curators are not bound to find Caution, out of a just Inference to the Father's Choice. But if their Condition alter, they may upon a Complaint to the Lords be ordained to find Surety, or to remove. A. Act. 8. This paternal Nomination of Curators is ordained to be in Lige pousie, when the Father is most capable to do it, for the Children's best Advantage: yet it is so far of a testamentary Nature, that it is ambulatory and alterable by the Father, while he is in such a State of Health.

Having spoke of Tutors and Curators separately, I shall now treat of them jointly

Tit. 3.

What is common to both Tutors and Curators, and what peculiar to either.

When several Tutors and Curators are named, so many of them are often appointed a Quorum, that is, their joint Concurrence to be necessary to make Deeds subsist in Law, and sometimes one or two of them, to be sine quo or sine quibus non, that is, whose Consent must be had to all Deeds.

By the present Custom of some Places Tutors have Salaries provided to them York. Comm. ad tit. ff. de contraria tutela. c. 12. In Spain and Italy Law allows to Tutors or Curators the Fifth of the Minor's free Rent. But neither by the Civil Law nor by our Law Stair lib. 1. tit. 6. §. 20. 27 June 1680 Spence and Wilson contra Foulis of Batho. have Tutors or Curators any Salaries by Virtue of their Office. Tho' Salaries are sometimes appointed to them by the Persons who name them.

Sect. 1.

Persons who may be Tutors and Curators and their Acceptance of the Office.

Any person may resume the Office, whom Law hath not expressly, or by necessary Consequence debarred. In general all are excluded from it who are incapable to perform the Dutys thereof. Such are Minors §. 13. Inst. de accus. tut. Because they themselves are under Tutorship, and stand in Need of the Assistance of others in the Management of their own Concerns. Yea a Tutor of Law must be 25 Years of Age.