

never come to light, till all means of repairing the minor were lost, as in this case the ratification alleged was never heard of for the space of fifty years till this time ; so that the party prejudged by it, could never seek to be restored against it, he being ignorant of any such thing ; yet the Lords sustained the allegiance.

No. 118.

Spottiswood, p. 347.

1631. July 15.

GRANT *against* GRANT.

No. 119.

Competition
of tutors.

The relict of Grant of Carron, being tutrix testamentary left to his bairns, which relict being married thereafter to a second husband, more than a year after the decease of her said first husband, whereby she ceasing to be tutrix testamentary, the nearest agnate is served tutor lawfully, and sworn, and finds caution ; but before his service be retoured to the chancellery, within a month or thereby after the service, he dies ; after whose decease, within the year after the tutrix testamentary's marriage with her second husband, albeit long after the expiring of an year after Carron's decease, there is a tutory dative granted by the King, and expedè ; and after this dative there is another, the next surviving agnate served tutor lawful, which is expedè within less than a year after the decease of the first tutor lawful, and within less than year and day after the marriage of the tutrix testamentary ; which two tutors contending for the right, the tutor lawful, albeit posterior, and albeit more than a year after the defunct's decease, was preferred to the tutor dative, seeing the first tutor lawful, and also the second now contending, were served within the year, after the tutrix testamentrix's marriage ; and during the time of her right of tutory testamentary, there were no place to any agnate to claim to be tutor lawful ; so that the tutory lawful being expedè within the year after her marriage, at which time of her marriage the tutory began only to be competent, to be claimed by the nearest agnate, the Lords sustained the same, and preferred the tutor lawful, whom they found only to have right, and that the time of their cessation to claim the tutory, ought not to be counted from the time of the decease of the bairn's father, but from the time of the tutrix testamentrix's marriage, within which space of one year thereafter, the tutor lawful was served, as said is ; and that the tutor dative had no right to claim the same, except the agnate served had ceased a year complete, after the relict's marriage, seeing she being tutrix testamentary, there was a middle impediment, to debar them from claiming to be tutors lawful ; wherefore the cessation ought not to take beginning of calculation, from the husband's death, as if the year after expiring, and they not claiming the same, there should be place to a dative ; but the count of the years cessation should begin at that time, when they might be tutors lawful, which was after the relict's second marriage, and no sooner ; but because the tutor lawful had not found a sufficient cautioner, but a person un-responal, the Lords ordained him to find another answerable cautioner for him, otherwise they would not authorize his gift of tutory.

Act. Gibson

Alt. Baird.

Durie, p. 596.