

1701. June 24. GUTHRIE and his TUTORS against EDGARTON.

Guthrie and his tutors pursued Edgarton for payment of a sum contained in his bond. Alleged, He was not obliged to pay, because, by the 2d act 1672, it is competent to the minor's debtors to allege, that inventories are not made; *ergo*, if they be not *debite et legitime* given up, the same objection will take place: *Ita est* these inventories are null, because the nearest of kin on the mother's side are not cited for upgiving thereof. Answered, *1mo*, They are not in the case of the said act of Parliament, which is only where inventories are not made: But here, not only are they given up, but this very debt pursued for is inserted therein; and though the nearest of kin on the mother's side are not cited, yet that was done by a pure mistake, because some of the tutors are the nearest of kin themselves on the mother's side. *2do*, This objection is wholly *jus tertii* to the debtor, who will be fully secure, his debt being *per expressum* mentioned in the inventory. The Lords thought the inventory informal for want of the citation; and though some of the tutors were nearest of kin on the mother's side, yet they ought to have cited those who were next in degree to them *ex parte matris*: Yet the Lords found this debt being in the inventory, the debtor had no interest to propone this nullity, without prejudice to the tutors to cite the nearest of kin, as accords.

Fountainball, v. 2. p. 115.

1702. July 14. BARGANY against HAMILTON.

Mrs. Joanna Hamilton, niece to the Lord Bargany, being past twelve years old, and about to choose her curators, and in custody of the Lady Swinton, her aunt by the mother's side, and her father's relations apprehending she might be influenced in her nomination and election of curators to neglect her father's friends, there is a petition given in by my Lord Bargany, her uncle, craving she may be removed out of Swinton's family, and put and sequestrated with some indifferent person, where she may be at absolute freedom and liberty to choose her curators, without influence and imposition, and with due regard to her father's relations as well as her mother's, and that all may have free access to her, and none be debarred nor denied access till she make her nomination, and then she may be placed where the major part of her curators shall think fit to put her; and till then, that she be not enhanced nor monopolized as a property to either of the two contending parties. It was alleged for her, That the sequestration of pupils was more proper for the Privy Council than the Session; and that regard is always had, that they were not to be given to the custody of those who had the hope of succession; and that she had already raised and executed her grieves against the nearest of kin, both on her father's side and mother's, and

No. 241:
Formalities of
making up
the inventory.

No. 242.
A pupil se-
questrated by
the Court, in
order to in-
sure a free
election of
curators.