1740. *January* 16. JOHNSTON and His TUTOR *ad litem against* JOHNSTON.

No. 270.
Inhibition raised in a pupil's name before his tutor *ad litem* was appointed, sustained.

It was observed as a nullity in an inhibition, that it was raised in a pupil's name on a dependence, before his tutor *ad litem* was appointed; which the Lords repelled, as being no more a nullity in the inhibition than it was in the process itself, which is regularly enough brought first into Court in the pupil's name, and the tutor *ad litem* thereafter appointed.

Kilkerran, No. 3. p. 584.

1740. *November* 7. YOUNG *against* WATSON and SYME.

No. 271.
Effect of one of two or more tutors not accepting.

Where A. and B. are appointed tutors, without expressing them to be joint-tutors, though one of them should not accept, the office would subsist with the other; for, to make a joint nomination, it must be expressed that they are to be joint-tutors.

Kilkerran, No. 4. p. 584.

1741. *January* 13. SIR JOHN BAIRD and Others, Petitioners.

No. 272.
Authority given to serve a pupil, who had no tutors, heir to his father.—Tutor *ad litem*.

Upon the application of Sir John Baird of Newbyth, and others, the nearest of kin to the infant children of the deceased Sir Robert Baird of Sauchtonhall, for having a factor appointed for managing the concerns of the said pupils, and particularly that the factor might be empowered to serve Sir David, the eldest son, heir to his father, the Lords appointed a factor, with power to make up titles to the moveable subjects belonging to the pupils, or any of them, in terms of the act of sederunt 1730.

But it being doubted, Whether they could empower the factor to serve Sir David heir to his father, the Lords deferred giving judgment till it should be enquired what had been done in the case of James Lord Bargany, a pupil, *in anno* 1711? And the warrants in that case having been produced, from which it appeared, that the Lords had given powers to the factor to serve the said Lord Bargany, the like was also given in this case.

Application was made at the same time for a power to the factor to pursue and defend in processes; which was refused, as the Lords never authorize a tutor *ad lites* in general; without prejudice to the factor's applying from time to time, as any particular process should be pursued for or against the pupil, to the Lords, or any other Judge before whom it should come, for a tutor *ad hanc litem.*

Kilkerran, No. 5. p. 585.