

1701. *February 20.* FOTHRINGHAM of POURY *against* KINLOCH of KILRY and FOTHRINGHAM, his Mother.

CICILIA Fotheringham, sister to the Laird of Poury, being first married to Doctor Kinloch, Laird of Kilry, and being left with several children, she next marries Ogilvie of Murtle; and a controversy arising anent the custody of her children at Privy Council, it ends in a transaction, by which they are allowed to stay with her till they were twelve years old, within two years of their choosing their curators, and then they were to be sequestered in some indifferent friend's hand, that they might not be influenced in the freedom of their election; and she was to have an allowance for their aliment till that time. The children being boarded in schools in Dundee, their mother and her second husband cause take out brieves from the Chancery for choosing curators to the eldest son, and thereon cite Poury, as his nearest of kin on the mother's side, to be present, in terms of the Act of Parliament 1672; who gives in an advocacy of the brieves, on thir two reasons:--*1mo.* That this was against the faith and design of the contract past betwixt them for securing the children from impressions in electing and naming their curators. *2do.* That it was illegal, and an anticipation, the boy not being fourteen full till March next, and done to surprise them.

The Lords, to obviate all designs, advocated the brieves, and, in the meantime, stopped the election.

It might be fit, by an Act of Parliament, to secure minors against this hazard in being trepanned and imposed on in making the nomination of their tutors; experience showing how oft their simplicity and credulity is abused in that matter, to their great prejudice. It is true, the 8th Act of Parliament 1696 allows the Lords to remove curators, or to find better caution, where their condition begins to fail: but this is not an adequate remedy for the disease; importunity, flattery, and crafty insinuations being as like to prevail on a weak minor as upon persons on deathbed; which is prevented by a prohibition.

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1701. *February 21.* ROBERT MALLOCH *against* The MAGISTRATES of EDINBURGH.

THE Town-Council of Edinburgh having, about 19 or 20 years ago, opened a new port at the foot of Halkerston's Wynd, for the conveniency of those who went on foot to Leith; and Robert Malloch having thereafter acquired some of the lands on the other side of the North Loch, and made yards and built houses thereon; and also having invited sundry weavers and other good tradesmen to set up at Moutrees-hills; and the deacons of crafts finding this prejudicial to them, and contrary to the 154th Act of Parliament 1592, discharging the exercise of craftsmen within the suburbs of burghs-royal, they neither bearing scot nor lot, nor paying stent, as the burghesses do; they prevail with the Magistrates of Edinburgh, in September 1700, a little before the election, to close up the port.