

Appearance, may at the Sight of him or any appointed by him, make Inventory and Duplicates thereof, subscribed by them and by the Judge or his Deputy and the Clerk; whereof one is given up to the Tutor and Curator; and two sealed and consigned in the Clerk's Hands for the Use of the Friends Act. 2. Sep. 3. Par. 2. Ch. 2. Tutors or Curators are ordained to pick or add to the principal Inventory any thing more belonging to the Minors than was first given up, within two Monthes after it comes to their Knowledge and Discovery; and to cause make a judicial Act thereupon and to leave two Duplicates of the said in the Clerk's Hands, to be delivered to the Minor's nearest of Kin ibid.

The Reason why Tutors or Curators ought to make Inventories is because they might otherwise easily ruin the Minors, by Imbezilement, Suppression, or Collusion; and it were next to impossible to make up an exact Charge against them when called to an Account of their Management and Intromissions. Sir George McKenzie (Observ. on Act. 2. Sep. 3. Ch. 2.) doubts if Curator bonis be comprehended under the Law obliging to make Inventory because it bears not in general, that no Tutor or Curator shall exercise &c. But only that no Tutor or Curator of any Pupil Minor idiot or furious Person shall exercise &c.

By the Civil Law, a Tutor neglecting to make Inventory, might not only be removed with Infamy. l. fin. s. i. C. Arbitr. tutel. but also was liable to the Pupil for Damage and Interest to be estimated by his Value in litem l. 7. pr. ff. admin. & peric. tut. But with us Infamy is never inflicted for such a neglect, unless some other gross Circumstance of Fraud concur therewith. Tutors or Curators neglecting to make Inventories are only obnoxious to be removed from their Offices as suspected of malversation Act. 2. Sep. 3. Par. 2. Ch. 2. 7 July 1600 Gibson contra L. Dunkeld and Thomson, and get no Reimbursement of their Expences wared out in the Minor's Affairs. Nor are any of the Minor's Debtors obliged to pay to his Tutors or Curators till they see their Sums contained in an Inventory or Pick made by the Tutors or Curators d. Act. 2. But a Tutor's Discharge of a Debt owing to his Pupil, upon Payment made to the Tutor, was sustained to exoner the Debtor at the Hands of the Pupil; albeit the Tutor had made no Inventory of the Pupil's Estate and it was alleged that the Solemnity of Inventories being a necessary Qualification of the Tutor's Power of exercising the Office of acting, and so essential to constitute the Person of a legal Tutor; every thing done by him as Tutor without making Inventory, is ineffectual and null, in so far as it is the Interest of the Pupil to have it so. In Respect it was answered, that the Law imposes no Necessity upon the Debtor to see the Debt inventoried, but only leaves it optional to him to pay or not, if the Debt was not inventoried; thereby to spur the Tutors to make full Inventories before they begin to administrate; 13 Juno 1722 Scot. Es. Logan contra Johnston of Kinnaird. If before making of the Inventory, there happens any Affair which does not admit of Delay, the Tutor may give Order about it, according as Necessity shall

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shall require l. 7. pr. ff. de admin. & peric. tut. Les loix civiles de. tom. 1. part. 1. liv. 2. tit. 1. sect. 3. Art. 10. The Civil Law allows a Father to dispoose with the Inventory of the Goods and Estate being made, all the Deeds and Writings are delivered over into the Hands of the Tutor or Curator that he may take Care of the Affairs, and give Order about every thing wherein the Interest of the Minor is concerned. In England Guardians are admitted to shew. offices by a writ called custodia admittendo.

2.

The Dutys of Administration.

In old Time a Wardator was both Tutor to the Minor Vassal and had the Custody of his Person. But that is altered by our present Custom. Now the Mother of a Pupil, while she continues a Widow, has the keeping of him till the Age of 7 years reckoned the Term of Infancy Gray. l. 2. tit. 20. s. 1. and sometimes longer in special Cases. Thus a Mother was allowed to keep her Daughter who was valetudinary till her Age of 11 years, before which Time she was not presumed to have any Thoughts of Marriage 6 February 1666 L. Dury contra Lady Dury. But ordinarily the Custody of a Pupil after 7 Years of Age belongs to a Tutor Testamentary or Dative, who is preferred to the Mother tho she be unmarried; because Tutor datus performe; it is the main Duty and Trust of a Tutor to take Care of the Pupil's Person, and to provide for his Health and Education according to his Qualitie and Estate l. 12. s. 3. ff. de admin. & peric. tut. If the Mother even of an Infant Pupil be dead or married to a second Husband, the Tutor whether Testamentary or Dative gets the Custody of such a Pupil's Person; and the Mother marrying again is not entrusted with the keeping of her Children of the first Bed l. 1. C. ubi pup. ed. del. Nov. 28. cap. 30. ult. Feb. 1692 Gordon contra Corfan Corp. jur. prud. forensh part. 2. Const. ii. def. 42. Because her Care of and Affection to them, is supposed to cool and to center upon her present Husband. The Custody of a Pupil's Person was committed to the Tutor Nominated in a Competition with the Pupil's Mother offering to entertain the Child gratis, tho the Tutor did not; she tho Mother being married again 4 July 1629 L. Langshaw contra Mier 5 February 1675 Fullerton contra Lady Boyne 9 February 1688 Gray Lady Edonglaph and her Husband contra Gray of Pitfour. Because albeit the second Husband had been left Tutor, he ought not to have the Education of the Pupil his Step-child; consequently neither should his Wife the Pupil's Mother, she being in potestate viri; and the Pupil might chance by the Influence of her or her Husband to be inconveniently matched. A Tutor of Law who is next Successor to the Tutor, cannot claim the Custody of his Person Stari just lib. 1. tit. 6. s. 15. yet a Tutor of Law obtained his Pupil a sickly Female to be removed at the Age of 11 years from the keeping of her Mother tho unmarried, to be educated by one of the Father's Friends; to the End she might not be swayed in her Marriage by the Mother or her Friends 6 Feb. 1666 L.

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power to any Tutor or Curator of a Pupil's Person by a Testamentary Tutor or Dative