

- No 3. especially the heirs being dead, and leaving none to represent them; and *quorum* should he call nominal heirs who have no manner of interest, but devolved all to her; and certainly she got up all the papers and instructions of payment, if there were any; and it is certain that she as *emprix hæreditatis* comes directly in the heirs place. It is true, by the Roman law, the seller was *primo loco* liable on that nice and stiff maxim, that *nemo alteri stipulari potest*; but the customs of all nations had now repudiated this, and laid down a more equitable principle, that articles in a contract in favour of a third party afford action to that third party, though no contractor, as Stair shews, tit. Conventional Obligations. It is true, there was an order among heirs; but if I subsume that the heir has nothing to succeed to, which is affectable or discussable, I will make the remoter heir liable, unless he condescend on a subject I can reach. Now the defender has so denuded Hume's heirs *per aversionem*, that there is not a denier left to them of his estate. THE LORDS sustained process against her, and found no necessity of calling the heirs of line.

Fountainhall, v. 2. p. 655.

S E C T. II.

Who must be Cited in a process against Minors, and who Certiorated in Extrajudicial Steps against them.

- No 4. 1573. March 6. CRIGHTON against LORD ROSSE.

A DEGREE pronounced against a pupil was reduced, because his tutors and curators were not called for their interest, although it was notour he had none.

Fol. Dic. v. 1. p. 132. Maitland, MS.

* * See This case *voce* TUTOR and PUPIL.

- No 5. 1610. February 1. LORD ELPHINGSTON against BRUCE.

It is sufficient in an improbation to summon a minor personally, and his tutors generally, at the market cross.

Fol. Dic. v. 1. p. 132. Haddington, MS.

* * See This case *voce* MINOR.