1686. *December.* MARTIN MITTRAY *against* THOMAS GORDON.

No. 220.

In a process of removing a tutor-testamentary as suspect, for that he had not made up inventories conform to act of Parliament,

Alleged for the defender, that the defunct gave up inventory himself of all his estate, which consisted of moveables, and the confirmation of the testament was a sufficient notification to the pupil and his friends of the estate.

The Lords found, That the tutor ought to have given up inventories, &c. but, in respect of the *dubietas juris*, allowed him to purge the *mora* and make inventories before extracting.

Harcarse, No. 988. *p.* 279.

1687. *January.* CHARTERS *against* M'MORRAN.

No. 221.

Found that a curator of a fatuous woman was not liable for the annual-rent of her annuity of £.20,000, neither during her life, nor after her death. It appears that the like will hold in favours of curators concerning annual-rents resting the time of the pupil's majority; though by practique, tutors are liable.

Harcarse, No. 989. *p.* 279.

1687. *February 5.* LADY NINEWELLS *against* ISOBEL and ESTHER SMITHS.

No. 222.

Found that a right acquired to a defunct's bond before the acquirer became tutor or pro-tutor, &c. to the debtor's son, is not presumed taken to the pupil's behoof.

Harcarse, No. 990. *p.* 297.

1687. *February* 2. AGNEW of Guldenock *against* SIR ANDREW AGNEW.

No. 223.

Found that a tutor-testamentary, acting as such, made him liable as tutor, though the testament was not confirmed.

Harcarse, No. 993. *p.* 280.

1687. *November* 22. MR. PATRICK BELL *against* CRAWFURD.

No. 224.

The Lords reduced (without considering lesion) a bond granted by a minor having curators without their consent. The lesion here was apparent; for the

minor acknowleged a trust in his father's person which he (the father) declared to him before his death, and allowed the creditor to insist upon qualifications of trust in his process of payment. No. 224.

Harcarse, No. 994. *p.* 280.

1688. *February* 24. THOMAS WILSON *against* RATHO.

No. 225.

Found that a curator is not obliged, after expiring of his office, to stock annual-rent, or to be liable therefore as tutors are for annual-rent after their office; but it is enough that they leave the annual-rents in the hands of responsal debtors.

It was alleged in this case, that tutors and curators lifting current annual-rent within the years of their office, and consequently where they are debtors to the minor, they ought to stock it quia nummi pupillares non debent esse otiosi.

Answered: They neither need to call for the annual-rents; nor, having called for them, are they obliged to employ them, seeing the minor's aliment and other affairs, perhaps debts, require tutors or curators to have ready money by them.

The Lords the second allegeance.

Harcarse No. 996. *p.* 281.

1688. *February.*

JAMES WILKIE, SON to MR. JOHN WILKIE, *against* The LAIRD of DALZIEL.

No. 226.

A son's debtor, who paid the money to the father as administrator in law to the creditor, being pursued after the father's death at the instance of the son,

The defender alleged, that he had paid by virtue of a decreet of the Lords.

Answered for the pursuer: The sentence of the Lords was obtained by collusion betwixt the father and the debtor, who got some abatement, and omitted obvious defences, viz. That the father being insolvent, should have found caution to re-employ the money; 2*do*, That the money being secured by an infeftment of annual-rent, it could not be uplifted but *causa cognita* before the Lords, viz. the necessity of uplifting being instructed; 3*tio*, There ought to have been requisition, conform to the provision in the bond.

Replied: The Lords' decreet ought to secure the defender, who was decerned to pay; and the clause of requisition was in the defender's favours, with which he might dispense.

The Lords, before answer, ordained trial to be made of the father's condition, and what abatement the debtor got.

Harcarse, No. 997. *p.* 281.