

the Lords thought, that all the Court ought to have done, was to settle the *maximum* that the tutrix could state for aliment, but that whatever she should state was to be supported by an account. But the plurality did not think proper to make any limitation. The case was indeed singular; a great fund, only two girls, the tutrix herself narrowly provided, and a person under no suspicion; but it is much doubted if the like would be granted to every tutor who might apply.

No. 281.

The pursuer, however, not satisfied with this appointment, applied to have it enlarged; for that the unavoidable expense of house-rent, household-furniture, servants' fees, their maintenance and clothing, and maintenance of the pupils, would go far to exhaust the whole sum, so that little or nothing would remain for their clothes, school-fees, physicians, &c. That what she chiefly had in her eye, when she brought the case before the Court, were the articles that relate to house-keeping, &c. which consist, from their nature, in many and minute particulars, of which it is hardly possible to have vouchers; but as to disbursements for clothes, schools, and physicians, she always proposed to keep exact accounts; and therefore craved, that the Lords would either modify a larger sum for the whole, or modify a sum which she might take credit for in her accounts, as aliment, besides the expense of schooling, clothes, and physicians.

And of this date, the Lords varied their former interlocutor, and modified £.150 Sterling yearly in name of ordinary aliment for the two pupils, and that over and above the expense of clothes, schools, and physicians, of which she was to keep an account.

*Kilkerran, No. 10. p. 587.*

1747. February 25. BOSWEL against \_\_\_\_\_.

Mr. James Boswel of Auchinleck, being debtor in a certain sum to \_\_\_\_\_, which, upon the creditor's decease, fell to his sister's son, his nearest of kin, a pupil; and the pupil's father as his administrator-in-law, proposing to lift the money, in order to his employing it more beneficially for his son's behoof, Auchinleck, in order to his more safe payment, procured a suspension. At discussing whereof, the Lords, on the Ordinary's verbal report, without enquiring into the administrator's view, or design in taking up the money, "Found the letters orderly proceeded," in respect it was not alleged that the administrator was in suspected circumstances.

No. 282.

Administra-  
tor's power  
to uplift the  
pupil's mo-  
ney.

*Kilkerran, No. 11. p. 589.*

1748. November 29. LIDDEL against URE.

A person obtained a brieve for serving himself tutor in law to his niece, and got a verdict accordingly, which he never retoured to the Chancery, but intromitted

No. 283.

No. 283. without farther title. The pupil sued him to account, and obtained decree, but failed to recover. She then sued the clerk of the service for having neglected to take caution. Found not liable.

*Kilkerran. D. Falconer.*

\* \* This case is No. 50. p. 13964. *voce* REPARATION.

1749. *November 24.* JAMES HALY *against* WILLIAM SANDS.

No. 284.

The tutors of William Haly of Kinneddar advertised his mansion-house, and some land with it, to be set by roup for eleven years; and accordingly a roup was held; the articles wrote by one of the tutors, and William Sands of Langside pronounced by the Judge the highest offerer, who signed his offer, and was put in possession; and the tenants, by order, furnished him with some carriages agreed on. But the articles had not been signed by any tutor, nor the roup itself by the Judge who acted, who also was not appointed by writ.

James Haly, goldsmith in Edinburgh, one of the tutors, and factor for the rest, executed a warning, and pursued the tenant to remove, as he had no written tack.

The defence was laid upon the circumstances of the roup; and that the tutors were not consulting their pupil's interest, but the private advantage of James Haly, who wanted the house for himself.

The Lords sustained the defence, and found expenses due, and ordained them to be paid by the pursuer himself, and not stated to his pupil.

Act. *R. Craigie.* Alt. *Ferguson.* Reporter, *Strichen.* Clerk, *Kirkpatrick.*

*D. Falconer, v. 2. No. 101. p. 116.*

1750. *February 6.* JOHN FIFE *against* The LADY NICOLSON.

No. 285.

An administrator in law confirmed a legacy left to his child. The caution found for him was found to be to the child, as well as to others interested in the subject.

Sir John Lauder of Fountainhall, Senator of the College of Justice, assigned to his grandchild Magdalen Scot, the infant daughter of Thomas Scot of Maleny, a bond for 2,000 merks Scots, which he afterwards received payment of. Thomas Scot confirmed his daughter, executrix-creditrrix to her grandfather; and gave up in inventory another bond for the like sum, which the Commissaries granted the power of intromitting with, "to the said Thomas Scot, as administrator of the law to, and for the use and behoof of the said Magdalen Scot;" providing she should render just count and reckoning of her intromissions. The cautioner was Sir James Nicolson of that ilk; and Thomas Scot "bound himself, and the said executrix, for their said cautioner's relief."