

1681. *November.* JOHN PEARSON *against* MR. JAMES WALWOOD.

No. 202.

Found that an act of curatory expedite before the pupil was *pubes*, was null, and that there was place for a new election of curators ; and here this nullity was proposed by the minor.

Harcarse, No. 968. p. 275.

1682. *January 6.* WILLIAM LOCKHART *against* MR. JOHN ELLIES.

No. 203.

Robert Lockhart having left a direction under his hand to his friends, to fill up after his death his children's provision, in a blank sheet of paper he had signed, and to fill up his testament in another blank signed sheet, and insert therein Mr. John Ellies, my Lord Leye, and Bailie Chiesly, as tutors testamentary substitute to his wife, in case of her death or marriage ; and she being in a treaty of marriage after his decease, these persons subscribed an order to fill up the testament, and insert themselves tutors before the relict was actually married, and afterwards caused score the blank left to fill up the children's provisions in.

The Lords, upon a contentious debate, found these acts to be qualifications of acceptance of the tutory, and found the actors liable to count as tutors, although they had done no other deed of administration during the whole tutory.

Harcarse, No. 969. p. 275.

* Sir P. Home reports this case :

Robert Lockhart, merchant in Edinburgh, having a little before his decease granted a warrant to Mr. John Ellies of Ellieston, the Lord Lee and several other friends, whereof Mr. John and William Sandelands were to be *sine quibus non*, making mention, that he had left three blank papers therewith inclosed, to be filled up with them, in one of which he appoints his testament to be drawn up and formed legally, and his second son named executor, and his wife tutrix to her children, and his friends therein named to be overseers ; and thereafter, by another paper, ratified the former warrant, and substituted Mr. John Ellies and the other friends to be tutors, in case her tutory did expire by marriage or otherwise ; and the mother being shortly thereafter married to Monteith of Carrubber, so that the substitution of the tutors did take place, William Lockhart, son to the said Robert, pursues Mr. John Ellies as one of the tutors for count and reckoning, as he who had accepted the office, in so far as after the decease he did fill up a formal testament in one of the blanks, containing a nomination of the relict to be tutrix, and in case of her decease or otherwise, substituting himself and the other persons to be tutors to the children ; and after the relict was married to a second husband, he, with other two of the tutors, did order the two blanks to be scored by war-