

1688. July 10.

CAPTAIN WILSON and his SPOUSE *against* FOWLIS of Ratho, the Curator's Heir.

No. 227.

Found that tutors or curators are obliged to employ moveable debts, or annual-rents of sums, or bonds uplifted by them during their office, upon annual-rent, within a year after their uplifting of the same, and that, *e contra*, they ought to have allowance for what they expend in alimending the pupil, or in paying of his debts or annual-rents; *2do*, Found that a tutor, at the expiring of his office, is obliged to stock the whole unuplifted annual-rents due before, conform to ancient practise; but that curators, after expiring of the curatory, are not obliged to stock unuplifted annual-rents, they being liable for the responsableness of the debtors, or for diligence; *3tio*, Found, that where tutor or curator are debtors to their minor, they are to be countable for the annual-rent due by themselves, as for annual-rent actually uplifted from other debtors; and the Lords declared they would so determine in time coming.

*Harcarse, No. 998. p. 282.** * Fountainhall's report of this case is No. 43. p. 505. *voce* ANNUAL-RENT.1688. July 12. JOHN REID *against* SIR ROBERT BERKLEY.

No. 228.

One being pursued for a legacy, alleged, That the sum legated was due by a bond secluding executors, which could not fall under testament.

Answered for the pursuer: That the defender being tutor, and nearest of kin to the testator, had to preclude his *testamenti factionem*, unwarrantably renewed the bond, which was conceived in his father's time to heirs and executors, with a clause secluding executors.

Replied: It is usual for provident men to adject a clause in their bonds secluding executors, for saving of quot and confirmation.

The Lords decerned against the defender; and found the renewing of the bond in other terms than it was before, unwarrantable; although, if the tutor had made it heritable, by an obligation to infest, the thing had been less questionable.

Harcarse, No. 1000. p. 282.

1688. July 12.

A. *against* B.

No. 229.

In this case, a tutor having uplifted his pupil's moveable sums, and, for better securing them, having taken an heritable security, and the pupil dying, and they, by the innovation of the security, falling to the tutor, who was his heir, the nearest