

with certification if he did not, they would remove him : and declared, that, whether he, or any, debursed the expenses in the cause, they should be allowed in their accounts. And, as to his renewing his caution ; in regard his former cautioner was dead, they waved that ; seeing he, as tutor-dative, had found the said caution to the Lords of Exchequer, and so they were the properest judges, whether he should find new caution again or not. *Vol. I. Page 625.*

1695. *February 26.*—The Lords decided the competition for the tutory of Fletcher of Aberlady, between Mr Henry Fletcher, the former tutor, mentioned 3d July 1694, and Cumming of Culter, the tutor-dative, now nominated by the Exchequer, who had assigned diets from time to time, to Mr Henry to find new caution, as his former cautioner was dead, and had no representatives ; and he having failed, the Exchequer removed him, and gave the tutory to Culter, who found sufficient caution. The debate arose, If the Exchequer were competent judges to the deprivation of tutors, that being a point of civil right ; for, though they give tutors, yet they cannot remove them. *Actio suspectæ tutelæ*, (whatever summary dispatch it requires, *ut res pupilli salva sit*,) yet is always pursued before the Lords. But, seeing Mr Henry had not his new cautioners ready, and those he offered were already bound to the minor, and had not yet cleared their former accounts,—(*viz.* Salton and Sir Patrick Murray :)

The Lords found the Exchequer's decret *res judicata*, and would not make the two judicatories interfere, but preferred Culter ; though some of the Lords inclined first to have the custom tried, what was the Exchequer's practice in removing tutors. *Vol. I. Page 672.*

1695. *February 26.* RANKING OF HAY OF MONKTON'S CREDITORS.

THE Lords advised the probation led in the sale of Hay of Monkton's lands ; and found, by the writs and diligences produced, compared with the proven rental of the lands, extending to 2800 merks, (all deductions allowed,) that they sufficiently instructed he was bankrupt ; and valued the house, yards, and parks, at 300 merks yearly, and the lands, including the coal thereon, (which lately paid £250 sterling a-year,) to 20 years' purchase. And, in respect of the Lady's consent to the sale (which she was not obliged to do, by the Act of Parliament, unless she pleased,) of her liferent infestment of £100 sterling, out of these lands, which was preferable to all the creditors, save those named in her husband's disposition, and with whom he was burdened ; they valued it to seven years' purchase, both in regard it was an annuity, free of all public burdens, and she was a young woman, within thirty years of age. And, seeing there was no right, nor standing tack of the teinds, they modified the kindly right thereof to five years' purchase ; seeing heritors, by law, can force the titular to sell them at nine ; and allowed the Lady 1200 merks for her bygonies, as a present subsistence, seeing it would take some time ere the roup were perfected, and before the price of her jointure would fall due ; and ordained the buyer to be liable to her for the annualrent of the price, from the term it fell due. Then the Lords nominated the six adjacent parish kirks, and the citation for the creditors, with the time of the roup, and two of their number to be overseers and directors of it. *Vol. I. Page 673.*