

No. 231. The Lords repelled the first reasons of advocacy, but sustained the second; and found, that the tutors testamentary accepting before the brieves of tutor of law were served, though not within a year of the defunct's death, when they might have accepted, did exclude the service, and that Sir John might yet accept as tutor testamentary.

Harcarse, No. 1001. p. 282.

No. 232. 1693. February 16. CATHCART of Carleton against BROWN of Colston.
Tutors neglecting to form inventories, are liable to forfeit all their expenses.
Fountainhall.

* * This case is No. 45. p. 3509. *voce* DILIGENCE.

No. 233. 1693. February 22.
COUNTESS of CALLENDAR against The EARL of LINLITHGOW.
A nomination of tutors to an infant heir does not fall, though a *quorum* do not accept; but in such a case the Lords obliged the acceptors to find caution, though regularly testamentary tutors are not put to find caution, unless there be a suspicion of their malversation, *vel si vergant ad inopiam*.
Fountainhall.

* * This case is No. 94. p. 14701. *voce* SOLIDUM ET PRO RATA.

No. 234. 1693. January 11. DOUGLAS against CARMICHAEL and LOCKHART.
What tutors ought to find caution?
The relict and children of Lieutenant Douglas against the Lord Carmichael and Sir William Lockhart. The Lords sustained the two accepting tutors, in respect the nomination bore a clause, that, failing of the rest, any one of them should have liberty to act, and that the word "failing" was not only by death after acceptation, but signified failing any way; and therefore found the letters orderly proceeded; but superseded extract for 15 days, that, in that space, they might exhibit the papers on oath; but would not let them be delivered up to the factors, but to lie in the Clerks' hands, till the tutors shall come home, so as the factors might have inspection of them, in order to prepare and form the inventories, conform to the act of Parliament 1672. Some proposed to have them sealed up till the tutors returned and discharged; but seeing these differences were also nominated