

S E C T. II.

Tutors, Factors, &c. Accounting.

1679. February 21. VISCOUNT of OXFORD *against* His CURATORS.

No 6.

THE LORDS found them (the curators) not liable to compt for the fiars of the year, they proving that no neighbouring heritor could reach that price, they were so high.

Fol. Dic. v. I. p. 311. Fountainball, MS.

* * Sir P. Home reports the same case, dating it in February 1682 :

IN the count and reckoning at the instance of the Viscount of Oxenford against his Curators, the LORDS found that the Curators were liable for the price of the victual according to the fiars of the year, unless they could instruct, that neighbour heritors sold their victual at a lower rate ; but found, where the Curators get any greater price than the fiars, that they were liable for the prices gotten.

Sir P. Home, MS. v. I. No 139.

* * Harcarse also reports this case :

FOUND that tutors and curators ought to compt for victual at the rate of the fiars, though they sold at under rates, unless they could condescend on a special cause why it was sold under the fiars ; and that they ought to hold compt for the full price they got the years they sold above the fiars ; and could not apply the excresce above the fiars these years, to make up what was under the fiars in other years.

In this process it is also found, That the factor for the curators having died about the end of the curatory, and the relict having applied to the Viscount for a factory, to lift the rests in the tenant's hands, which he refused, as appeared by an instrument taken upon it ; and, on the contrary, Mr James Cockburn [named] factor for lifting the rests ; that the factor and his executor were not liable to compt for the rests, they being so impeded to uplift or do diligence against the tenants ; although now, after seven years, it was contended, that some of the tenants were insolvent. *See No 52. p. 3516.*

Harcarse, (TUTORS AND CURATORS.) Nos 971. & 972. p. 275.