

minor acknowledged a trust in his father's person which he (the father) declared to him before his death, and allowed the creditor to insist upon qualifications of trust in his process of payment. No. 224.

*Harcarse, No. 994. p. 280.*

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1688. February 24. THOMAS WILSON *against* RATHO.

No. 225.

Found that a curator is not obliged, after expiring of his office, to stock annual-rent, or to be liable therefore as tutors are for annual-rent after their office; but it is enough that they leave the annual-rents in the hands of responsal debtors.

It was alleged in this case, that tutors and curators lifting current annual-rent within the years of their office, and consequently where they are debtors, to the minor, they ought to stock it *quia nummi pupillares non debent esse otiosi*.

Answered: They neither need to call for the annual-rents; nor, having called for them, are they obliged to employ them, seeing the minor's aliment and other affairs, perhaps debts, require tutors or curators to have ready money by them.

The Lords the second allegiance.

*Harcarse No. 996. p. 281.*

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1688. February.

JAMES WILKIE, SON TO MR. JOHN WILKIE, *against* The LAIRD of DALZIEL.

No. 226.

A son's debtor, who paid the money to the father as administrator in law to the creditor, being pursued after the father's death at the instance of the son,

The defender alleged, that he had paid by virtue of a decret of the Lords.

Answered for the pursuer: The sentence of the Lords was obtained by collusion betwixt the father and the debtor, who got some abatement, and omitted obvious defences, *viz.* That the father being insolvent, should have found caution to re-employ the money; *2do*, That the money being secured by an infestment of annual-rent, it could not be uplifted but *causa cognita* before the Lords, *viz.* the necessity of uplifting being instructed; *3tio*, There ought to have been requisition, conform to the provision in the bond.

Replied: The Lords' decret ought to secure the defender, who was decerned to pay; and the clause of requisition was in the defender's favours, with which he might dispense.

The Lords, before answer, ordained trial to be made of the father's condition, and what abatement the debtor got.

*Harcarse, No. 997. p. 281.*