No. 15. 1742, July 30. James Dickson *against* Sarah Torrie.

Tutors entered into a contract of sale of a pupil's lands at a certain price, (without authority from the Court) agreeing that the purchaser might purchase in the pupil's debts, but that he should communicate the eases to the pupil after his majority, on his ratifying the disposition. The heir of this pupil quarrelled the sale, and reduced it, not for lesion, but for want of authority. Then the pupil claimed benefit of the eases,—but the Lords found he could not claim the eases, and quarrel the bargain, 3d July; and this day adhered.

No. 16. 1742, Nov. 24. Parkhill *against* Geddes of Scotstown.

The Lords found that a tutor neglecting to make up inventories of his pupil's father's means, (a merchant) nor even sundry malversations, pretty like frauds, were no sufficient ground for giving the pupil, now of age, an oath *in litem* of the extent of his father's *free* means, nor to decern in any particular sum upon the uncertain conjectural evidence of neighbours, that they thought the deponent worth so much; but reserved the effect of these malversations in advising the proof upon any articles of the tutor's accounts that should afterwards be brought, 24th November. 8th December, Refused a bill without answers, and adhered.

No. 17. 1743, Jan. 28. Sutherland of Pronzie, Infant, *against* His Uncle.

A brieve of tutory being served, and at the day of compearance, the tutor of law not compearing and producing the brieve, the nearest of kin on the mother's side craved the diet to be deserted *simpliciter;* but the Judge deserted the diet until the brieve be of new served; which the Lords thought he could not do; and that since the brieve was not produced and insisted in, it should have been deserted *simpliciter*.

No. 18. 1746, Dec. 9. Walkingshaw *against* William Gray.

Johnston of Straiton having on death-bed named tutors and curators to his children, and appointed a factor with a salary during the tutory and curatory; the tutors quarrelled the nomination of a factor, or at least insisted they had power to change him. The Lords agreed that the tutors could not remove the factor during the tutory, but found no necessity to determine the point after pupillarity; but the factor agreed to find caution.

No. 20. 1748, Nov. 29. Ure *against* Liddle.

A tutor of law being served, the clerk neglected to take a bond of caution, at least none now appears; however the service never was retoured; and the infant having recovered decreet against him for the balance, now sues Ure, the clerk, for not taking the bond. Haining found him liable; but we, in respect the service was not retoured, nor

no gift of tutory, thought, though a bond had been taken, the cautioners would not have been liable; and therefore we assoilzied the clerk.

No. 21. 1748, Dec. 7. ROBERT LECKIE *against* DAVID RENNIE.

IN May 1728, James Rennie disponed his effects to his nephew James Rennie in liferent, and his son David the defender in fee, excluding the father's power of administration; and named six tutors to David, whereof one was Andrew Leckie, notary-public; and left several legacies, and among others 100 merks to Andrew Leckie. After James Rennie's death, the tutors met and inspected the settlement, and adjourned their meeting in July 1728, and Andrew Leckie does not appear to have again met with them. The other tutors appointed one of their number, William Danskine, factor, without finding caution, who managed very ill, and the effects were embezzled or perished, and the debts not paid. In July 1729, Andrew Leckie required the other tutors to remove Danskine from the factory, and call him to account, and appoint another factor with a cautioner, and in that case declared himself willing to join with them, otherwise protested that his not joining with them might not deprive him of his legacy. One of the tutors declared his willingness to remove Danskine, and Danskine himself declared his willingness to give up the factory, and to account, but no more followed upon it. August 1729 Leckie obtained a decreet of the Sheriff of Stirling for his legacy, which was suspended in 1732, and came before me to be discussed, in the name of Robert Leckie, son of Andrew Leckie. The question was, if the Roman law takes place with us in this point, and whether in this case Leckie had a good excuse for not accepting. The Lords pretty unanimously found the legacy not due, and thought that the bad management of the other tutors made it rather the more necessary for him to interpose.

No. 22. 1749, July 18. MR CHARTERIS'S CLAIM ON LORD ELCHO'S ESTATE.

THE Lords dismissed the claim, 4th July. 18th July, Adhered, and refused a reclaiming bill without answers.

No. 23. 1751, Feb. 19. JOHNSTON *against* CRAWFURD and OTHERS.

THE deceased Johnston of Straiton, by a deed *in liege poustie*, appointed certain persons tutors and curators to his children, three to be a *quorum*, but his wife *sine qua non*. The words were, " with power to them, or any two of them, with the said mother, to exerce the officer." He thereafter on death-bed made another nomination of tutors and curators, leaving out one of the first named, and adding other four, and made three a *quorum*, without any mention of the *sine qua non*, and with power to those first named to accept either on the first or last nomination. After the pupillarity was expired, the widow wanting to get free of these tutors and curators, renounced the office of curatory, and the eldest son raised an edict for chusing curators, which was opposed by those named, and advocated to this Court. The minor alleged that the first nomination was fallen by his mother's renunciation, and that the nomination on death-bed could not bar him from