

in the testament, and did not accept, the Lords thought there were more humour than reason in their keeping up the papers. No. 234.

1693. *November 23.*—The action, Lieutenant-General Douglas' Lady and brother, as tutors to his children, against the Laird of Carmichael, and others, was again debated in presence. The Lady reclaimed against the interlocutor burdening her with caution, seeing she was a testamentary tutor; and that Callander's case *toto caelo* differed, in regard that nomination bore not, if any of them failed, then the rest to administrate, as this did. Though the law is plain in excoeming such tutors from caution, yet L. 17. D. De tutel. testament. and the whole title De confirmando Tutore shew, that this rule wants not exceptions, and that the Prætor may sometimes over-rule the *scriptura testamenti*. Some of the Lords thought, that she and her brother (though a soldier, who *jure Romano* were not to be tutors) could not be subjected to find caution; others were of opinion, that, in her circumstances, it was both just and safest to require caution; but the plurality were for liberating her, unless they could condescend upon some ground of malversation to render her suspected; which the friends offered to do.

1693. *November 24.*—The foresaid case was again heard; and the malversations condescended on, viz. that they had not made inventory of the sums lying in England. But it was made appear she had given up inventories there. The next was, that they had granted a factory to Robert Colvil to make inventories. The Lords found this no malversation. Then alleged, They had intromitted with sums of money before the inventory. The Lords would not receive what must abide probation *hoc ordine* by way of exception; but reserved their action for removing them as suspected; and decerned in the exhibition of writs to them, without burdening them with caution.

Fountainhall, v. 1. p. 544. & 571.

1694. *July 24.*

DR. CRAWFURD and JAMES INGLIS *against* The INCORPORATION of the
CORDINERS of the CANONGATE.

This was a competition for a sum in that Trade's hands, between the Doctor, as assignee by James Inglis' father, and the said James Inglis, to whose behoof it was declared the bond was granted. The Lords found the father, as administrator to his son, a minor, could not assign this bond; though it was offered to be proved, that the onerous cause of the assignation was the Doctor's advancing necessaries to aliment the son, but that the money belonged to the boy, conform to the conception of the bond. But, on a bill, refused to let it be uplifted, without caution to re-employ it to the same heirs as it now stands. No. 235.

Fountainhall, v. 1. p. 637.