

No. 283. without farther title. The pupil sued him to account, and obtained decree, but failed to recover. She then sued the clerk of the service for having neglected to take caution. Found not liable.

*Kilkerran. D. Falconer.*

\* \* This case is No. 50. p. 13964. *voce* REPARATION.

1749. *November 24.* JAMES HALY *against* WILLIAM SANDS.

No. 284.

The tutors of William Haly of Kinneddar advertised his mansion-house, and some land with it, to be set by roup for eleven years; and accordingly a roup was held; the articles wrote by one of the tutors, and William Sands of Langside pronounced by the Judge the highest offerer, who signed his offer, and was put in possession; and the tenants, by order, furnished him with some carriages agreed on. But the articles had not been signed by any tutor, nor the roup itself by the Judge who acted, who also was not appointed by writ.

James Haly, goldsmith in Edinburgh, one of the tutors, and factor for the rest, executed a warning, and pursued the tenant to remove, as he had no written tack.

The defence was laid upon the circumstances of the roup; and that the tutors were not consulting their pupil's interest, but the private advantage of James Haly, who wanted the house for himself.

The Lords sustained the defence, and found expenses due, and ordained them to be paid by the pursuer himself, and not stated to his pupil.

Act. *R. Craigie.* Alt. *Ferguson.* Reporter, *Strichen.* Clerk, *Kirkpatrick.*

*D. Falconer, v. 2. No. 101. p. 116.*

1750. *February 6.* JOHN FIFE *against* The LADY NICOLSON.

No. 285.

An administrator in law confirmed a legacy left to his child. The caution found for him was found to be to the child, as well as to others interested in the subject.

Sir John Lauder of Fountainhall, Senator of the College of Justice, assigned to his grandchild Magdalen Scot, the infant daughter of Thomas Scot of Maleny, a bond for 2,000 merks Scots, which he afterwards received payment of. Thomas Scot confirmed his daughter, executrix-credatrix to her grandfather; and gave up in inventory another bond for the like sum, which the Commissaries granted the power of intromitting with, "to the said Thomas Scot, as administrator of the law to, and for the use and behoof of the said Magdalen Scot;" providing she should render just count and reckoning of her intromissions. The cautioner was Sir James Nicolson of that ilk; and Thomas Scot "bound himself, and the said executrix, for their said cautioner's relief."