granted to his brother a back-bond, and that it was lodged in Mr Patrick Middleton's hands, and that he had got it from him, and had burnt it. Kennoway next pursued a declarator of trust against Robert, and Lord Dun assoilzied, because there was no proof in terms of the act 1696. The pursuer reclaimed, and some of the Lords thought there was a fraud in Robert Ainslie, and therefore proveable by witnesses. I could not agree upon that footing, because every breach of trust may be accounted a fraud, so that would be a repeal of the act 1696. But I thought, that though the act made a written declaration of trust necessary, yet it did not follow that where such had been granted, and either lost casually, or stolen, or robbed, that therefore the right was lost, for still the tenor might be proved, or if stolen or robbed by the trustee, that theft or robbery might be proved by witnesses, and he obliged to make it up;—that here was sufficient proof against Robert of his unwarrantably abstracting and destroying the back-bond, and therefore the trust might be declared against him; and the Lords found accordingly; and renewed this interlocutor on a transference against his heir.

TUTOR—CURATOR—PUPIL.

No. 1. 1734, July 9. MILLER *against* DUNNING AND WEIR.

THE Lords refused the bill as incompetent by summary bill.

No. 2. 1735, July 24. CHILDREN OF EARL OF WEMYSS *against* THEIR BROTHER.

THE Lords demurred whether the tutors being only liable for intromissions but not for omissions they could be decerned personally for intromissions in their factors hands; and therefore the pursuer insisting only for decreet against them for the interest, the same was restricted accordingly. 2dly, They found the clause committing the education of the children to their mother was not a condition of the aliment, and refused the bill *in toto*.

No. 3. 1735, Dec. 5. GRAHAM *against* THE EARL OF MARCH.

THE Lords were of opinion that the rule that a tutor cannot alienate without authority of a Judge extends to heritable debts as well as rights of property; but this being an alienation in favour of the debtor or reverser who had a right to compel him to receive his money, they found the authority of a Judge not necessary, and assoilzied from the reduction. The President doubted of this interlocutor. Lord Newhall thought a tutor had right to uplift heritable debts as well as personal. It was asked if this would extend to proper wadsets. But many of us doubted of that point, because a proper wadset is *pactum de retrovendendo*,—29th January.—5th December, The Lords adhered to the interlocutor marked 29th January last unanimously, at least *nem. con.*; and indeed it seems