

champ was made the party-contractor only to oversee his diligence and attendance.
Vol. I. Page 381.

1685. *December 8.* MARGARET BECK and THOMAS BOOG *against* WILLIAM BECK, Factor for Edward Beck.

MARGARET Beck and Thomas Boog, her curator, pursue William Beck, as factor for Edward Beck, her uncle and tutor, to exhibit and deliver up her whole writs. ALLEGED,—*1mo*, The tutor is not called, as he ought to be. *2do*, They cannot be delivered up till count and reckoning, seeing they are the instructions both of charge and discharge, and he must be refunded of what he has expended. *3tio*, By the father's disposition, Edward is substituted next heir, failyieing of her, (who is blind and tender;) and therefore he has an interest to retain them, till they find sufficient caution, not only *tutorio seu curatorio nomine*, but also *ad omnes effectus*, to refund the goods and estate to the said Edward, in case she decease without heirs.

ANSWERED,—Thir defences are competent against delivery, but not against exhibition; and they cannot find caution till they have inspection; and craved he may count and reckon; and offered to prove he has as much *intus* as will pay all his expenses.

The Lords ordain William Beck, the defender, to depone and exhibit the writs called for; reserving to him and Edward, his constituent, all their lawful defences against delivery: and find there is no necessity to cite his said constituent now, because the factor has proponed peremptory defences: and ordain the curators to find sufficient caution *curatorio nomine*: and the defender to produce the account of his charges and depursements, with the instructions thereof; as also, the account of his intromissions; to the effect it may appear if there be any balance due to him; and he proving there is a balance, then allow the pursuers to prove that *intus habet* by intromission with the pupil's means and estate: and ordain all this to be proven before delivery.

Vol. I. Page 383.

1685. *December 12.* The POOR of the WEST KIRK *against* BAIRD, DEAN, &c.

THE cause of the Poor of the West-kirk against Bailie Baird, Dean, and others, is advised: and the Lords decerned them to repay, proportionally, the 500 merks which the Kirk-session advanced out of their poor's money in 1650, to reëdify some seats in the church, then broken down by the English; reserving relief against their authors in the lands.
Vol. I. Page 384.