

1629. *January 30.* EARL ROTHES *against* WARDLAW.

No. 105.

It was questioned, if the tutor to a pupil might take the gift of his pupil's ward to his own use, and not to the pupil's; and if the Judge should allow the tutor to pursue thereon, without giving some security to apply the same to the pupil's use, he being satisfied of his charges.

Act. *Hay & Aiton.*

Alt. *Nicolson.*

Clerk, *Gibson.*

Durie, p. 420.

1629. *March 5.* WHITE *against* DOUGLAS.

No. 106.

The husband being obliged to provide his wife, as is deduced, and marked, No. 3. p. 3049. and one of the bonds, whereof the relict craved a life-rent of the sums therein contained, being made to the husband by his brother, which brother was tutor to the heir of the defunct, who was convened, for fulfilling of his father's obligation, and the said relict having discharged the said tutor of the annual-rent of that bond, for her life-time, in favours of the tutor, for love and favour borne by her to him, and for his pains, as tutor, in the minor's affairs; it was found, That albeit this discharge was sufficient to exclude the relict, and to denude her of her life-rent thereof, yet that could not liberate the tutor at the minor's hands, but that he remained obliged to his pupil in the said annual-rent, and that the benefit of the discharge of the life-rent, albeit in favours of the tutor, yet should accresce to the pupil, and be profitable to him, and not to the tutor, who was debtor, seeing the cause thereof was for the tutor's pains in the minor's affairs; whose affairs, it was seen, might be done without great cost and travel, and the tutor's expense would be refunded *actione tutelæ contraria*; and also the discharge by the relict bore, "that the tutor would made no benefit nor profit in his office of tutory," which was not a clause allowable, the tutor being bound, in law, to do his office, without respect of profit. But this decision was thereafter altered.

Rights respecting the pupil conveyed to the tutor accresce to the pupil.

Alt. *Burnet.*

Clerk, *Hay.*

Durie, p. 433.

1629. *March 18.* NASMYTH *against* NASMYTH.

No. 107.

Tutors are not countable for annual-of annual received by them for their pupils' gears.

Auchinleck MS. p. 244.

* * * See Note, p. 6522.