

The Lords found, That the pupil had interest to call for exhibition and delivery of all writs that were in his father's possession *quovis modo*, and ordained the tutor to exhibit all, without prejudice to any party having interest to crave the delivery of these writs, if they belonged to them.

*Stair, v. 1. p. 247.*

No. 146.  
not only for such as belonged to the defunct, but for such as were in his possession at his death.

1665. February 4.

BEG against BEG.

Thomas Beg in Edinburgh having a son of his first marriage, and providing his children of two subsequent marriages to his means, the son of the first marriage pursues his father for his mother's third, and craves annual-rent therefor, he being minor, and his father his tutor of law, and therefore liable, as other tutors, for annual-rent.

Which the Lords found relevant.

*Stair, v. 1. p. 264.*

No. 147.

1665. June 10.

SWINTOUN against NOTMAN.

Swintoun in his testament, having named his wife tutrix to his children, and Notman and others, overseers; his relict within a year was married, and so her tutory ended. Shortly after Notman, received from her a number of several tickets belonging to the defunct, and gave his receipt thereof, bearing that he had received them in his custody, and keeping. Thereafter, he uplifted the sums, contained in some of the tickets, and gave a discharge to the relict, and second husband, of some particulars, and consented with the pupil, to a discharge to a debtor, which expressly bore him to be tutor testamentary, and did intromit with the rents of some tenements, and disposed upon some sheep. Whereupon Swintoun, the pupil, pursues him as tutor or pro-tutor, not only for all he intromitted with, but for the annualrent thereof, and for all the rest of the defunct's means, which he ought to have intromitted with, and to have called the tutrix to an account therefore, and condescended upon the insight and plenishing of the defunct's house, the goods in his shop, he being a merchant, the debts in his account books, and those due by his tickets, not only received by Notman, but by others, and for the remainder of his sheep, and other moveables, and for the rest of his rents, not uplifted by Notman. It was alleged for Notman; *1mo*, That that member of the libel was not relevant, whereby he was pursued, not only for that he intromitted with, but what he omitted, because a pro-tutor is not obliged as far as a tutor for the pupil's whole means; but this far only, that whatsoever he intromits with, as to that he is obliged as a tutor, to employ it, and preserved it, and so is liable for annual-rent therefore, and in that he differs from another *negotiorum gestor*, who is not liable for annualrent, but he is not liable for other particulars of others kinds, that he meddled not with; as albeit he had meddled with the tickets, yet that

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Protutors are liable as tutors.