1667. *July* 5. M'BRAIR *against* M'BRAIR.

No. 159.

In an action for removing of a suspect tutor, at the instance of the pupil's grandmother on the mother's side, the Lords finding the suspicion to be but light, they, by consent of parties, joined another in the administration of the tutory, to be named by the pursuer.

Here it was debated by the pursuer, that his action was *quasi popularis*.

Harcarse, No. 12. *p.* 295.

1667. *December* 14. JOHN CAMPBELL *against* CONSTANTINE DOUGAL.

No. 160.
Effect of assignation by a father as administrator.

Constantine Dougal having granted a bond to John Houstoun, bearing, that John, for himself, and as administrator for his son Constantine Campbell had lent the sum, and that the same should be payable to the father, he being on life, and failing him by decease, to be payable to Constantine his son, as being his own proper monies, and to his heirs or assignees, Constantine assigns this bond to John Campbell; who having pursued exhibition thereof, and it being produced, insists for delivery. It was alleged for the producer, That it ought to be delivered back to him, because he had right thereto by assignation from John Houstoun, who in effect was fiar of the sum, it being lent to him, and payable to him during his life, and Constantine his son was only heir substituted, as is ordinarily interpreted by the Lords in such bonds or sums lent by fathers, to be payable to themselves, and after their decease to such bairns; *2dly*, The father, as lawful adminstrator to his son, might have lifted the sum in his son's minority, and therefore he might assign the same. The pursuer answered to the *first*, That albeit bonds for money lent by parents, payable to themselves, and such children after their death, be so interpreted, that the fathers are fiars, yet that is only where the sums are the parents' own; but this sum is acknowledged to be the son's own money by the bond itself; *2dly*, Albeit the father, as lawful administrator, might have lifted the sum, yet cannot assign, because that is no proper act of administration competent to tutors or administrators; and executors may uplift sums, and yet cannot assign. The defender answered to the *first*, That the money is lent by the father, not only as administrator, but bears expressly for himself, and that these words as being his own money did not sufficiently prove that it came not from the father, but that, after the father's decease, it would be the son's money. To the *second*, That the conception of the bond being, expressly to pay to the father, warranted him to assign; and the assignee, being his procurator, might lift as well as he, the same way as assignees can lift during the executor's life.

The Lords found the conception of the bond to constitute the son to be fiar, and that at least the words, "as being the son's own monies," presumed the