

(DUE BY TUTORS AND CURATORS.)

- No 37. much less against me, *nam pena suos tantum debet tenere auctores*, and it is but a *quasi delictum*. 2do, The Lords, in Carleton and Colton's case, and between Crookshank's and Gray*, found that it only cut off their personal expences; and, by act of sederunt, 21st February 1693, it is explained not to extend to what is bestowed on the minor's aliment or reparation of his houses, but only to law expences. — THE LORDS, to shun interfering with former decisions, allowed the reporter first to try how they proved these articles of debursemments; for if they succumbed in the probation, there would be no necessity of discussing the relevancy. (See DILIGENCE.)

Fol. Dic. v. 1. p. 39. Fount. v. 1. p. 701.

- No 38. 1678. November 20. HAY of Drumelzier against The EARL of TWEEDALE.

FOUND Tweedale, as tutor, liable for annualrent of rents of tenements, a year after they were payable; and for the annualrent of those annuals after the expiration of the tutory.

Fol. Dic. v. 1. p. 39. Fount. MS.

- No 39. 1683. November 19. WILSON against FOULIS.

The price of goods roup'd *durante tutela*, bears annualrent after a year.

THOMAS WILSON, merchant in Edinburgh, *contra* Foulis of Ratho, reported by Saline.—THE LORDS found the prices 'got at the roup, by Ratho, curator to Margaret Spence, now Wilson's wife, for her free plenishing, (*i. e.* deducing always the expences of the roup) must be the rule by which he must count, and not the prices given up at random in the confirmed testament: And declare him not liable for the annualrent of the roup'd goods from the time of his receiving in the price, but within a year after the beginning of the roup, allowing him that time to put it in a stock and lend it out: And find the tutor must have retention of the annualrent of the years 1646 and 1647, conform to the acts of Parliament made in these years. And that the curator is not liable for the annualrent of Cockburn of Ormiston's sum not uplifted by himself, but put in his hand by his minor after her majority, to keep it till she called for it; unless she pactioned with him that he should pay annualrent for it; and farther modify to the curator 100 merks Scots yearly, for his incident charges and debursemments upon Margaret Spence the minor, now the pursuer's spouse, and that over and above the 200 merks of yearly aliment already modified to him;' (as observed by Stair, 16th February 1681, Spence.†)—There was a bill given in against this by Bailie Wilson, but it was refused, 16th January 1684. See p. 354. of this Dictionary.

Fol. Dic. v. 1. p. 39. Fount. v. 1. p. 247.

* See General List of Names. † Stair, v. 2. p. 860. voce PRESUMPTION, *donatio non presumitur*.