

(DUE BY TUTORS AND CURATORS.)

1673. February 27.

DOUGLAS against GRAY.

IN a pursuit at the instance of Isobel Douglas, against the Heirs of a Tutor, the question being, Whether a tutor was obliged to lift and employ the annualrents of his pupil's means, that were run before the defunct's death, in respect that it hath been oftentimes found, That as to the current annualrents during the tutory, the tutor is not obliged to employ the same, or pay annualrent therefor, during the tutory, but to leave them employed for annualrent at the end of the tutory :

THE LORDS found, That tutors were obliged to lift and employ annualrents due before the tutory, within a year after the acceptance of the tutory, or to do diligence therefor, or otherwise to be liable for the annualrent of the same.

*Fol. Dic. v. 1. p. 39. Stair, v. 2. p. 181.*

No 36.

Tutors must uplift and employ annualrents due before the tutory, within a year after acceptance.

1696. January 16.

IRVINE and OLIPHANT against SPENCE.

CROGERIG reported Irvine of Inchray, and David Oliphant his tutor, against Thomas Spence, as cautioner for Cleghorn, the former tutor.—THE LORDS found the tutor was bound to stock the annualrents due to his pupil preceding his acceptance into a principal sum, within a year after his entry to the office, and from that time was to be liable in annualrent ; and, as to mails and duties of lands and other rents, found he was in like manner countable within a year after they were payable and due ; and that *laxamentum temporis* was allowed tutors to find hands, and lend out their pupil's means, *cum nummi pupillares non debeant esse otiosi* ; but for annualrents of sums falling due *pendente tutela*, they were not to be accumulate into a principal sum to bear annualrent, but once during the tutory or curatory ; and so they were only countable for the *usura usurarum* of such *post finitam tutelam et curatellam*.

Then they insisted against him for omissions, in not doing diligence against Pitlour, and some other debtors of the minor's.—*Answered*, He was stopped by the furcase of justice, which happened at the Revolution in November 1688 ; and he died shortly after. *2do*, Many of them were insolvent, and it had been the pupil's loss to have cast out his money in pursuits against them.—THE LORDS thought it too strict to require diligence from the tutor in this circumstantiate case ; and allowed him to prove they were then habit and repute insolvent. The next article was, for some expences claimed by the tutor's cautioner.—*Alleged*, He made no inventory conform to the act of Parliament 1672, and so has incurred the certification of losing all his expences.—*Answered*, *Imo*, I am but the tutor's cautioner, and that act is penal, and as it would not militate against his heir,

No 37.

Found as above. This *laxamentum temporis* allowed, in order to find proper hands for lending out the money.

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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 annual-rent 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*.