

No 48.

tutor could be liable for omitting to do diligence against Grange's estate for this debt; and the plurality found him not liable, but all agreed that the doublety of a pupil's right was no ground nor defence, whereon a tutor or curator could seek to be exonerated from not having done diligence for trying to recover the same.

*Fol. Dic. v. 1. p. 241. Fountainhall, v. 2. p. 144.*

1709. June 11.

MRS GRISSEL BRUCE LADY RIDDOCH *against* HUGH FORSYTH of Garvel.

No 49.

A tutor was found liable for annualrents of the pupil's money unuplifted by him during his office, and not allowed to discharge himself with the annualrents, yet resting in the hands of responsible debtors; but the Lords ordained the pupil to furnish him with the bonds for procuring payment of these outstanding annualrents.

IN the action of compt and reckoning for tutory intromissions mentioned *voce* TUTOR AND PUPIL, at the instance of the Lady Riddoch against Garvel; the tutor was found liable for any annualrents of the pupil's money run on unuplifted by him during his office, and not allowed to discharge himself with the annualrents, as yet resting in the hands of responsal debtors; though he offered warrandice and caution that they are not uplifted; in respect law obligeth tutors to state their pupil's annualrents in a principal sum bearing annualrent once during their office; and warranting the same to be still resting, doth only found a second plea to the minor upon the tutor's warrandice. But the pursuer was ordained to furnish the defender with the bonds for procuring payment of these outstanding annualrents. And the defender was to have allowance for cess, teind, and feu-duty of these years, for which he holds compt for the rent of the land, upon procuring declarations from the collectors of the cess, the chamberlains of the titular of the teinds, and superior of the lands, that the cess, teind, and feu-duties of such years were paid, and finding caution to relieve the pursuer thereof, albeit the defender had not the particular receipts to produce. But he got no allowance for incident personal charges in the pupil's affairs, not particularly instructed; in respect inventories were not given up in the terms of the act of Parliament 1672. Albeit it was alleged that the tutor had done the equivalent, by signing an inventory of the pupil's whole estate, writs and evidents, in presence of her nearest relations on the father and mother's side, and giving up the said inventory to be kept by them, as a charge and check against him.

*Fol. Dic. v. 1. p. 241. Forbes, p. 331.*

1710. December 14.

SMITH *against* SMITH.

No 50.

A father gave up, in the inventory of debts due to him, a sum promised by his wife's brother, over and

MR JOHN SMITH of Brousterland, disposes his land-estate to William, his eldest son; and, having five children besides, he grants a bond of provision, whereby he distributes 13,000 merks among them, payable after his decease, conform to the proportions he divides among them; and then he adjects this clause, 'and in case any of my foresaid children die without heirs lawfully pro-