

No. 83.

1622. January 24. TAYLOR against FORRESTER.

Taylor against Forrester's suspension of a decree of deliverie of the pupils to Forrester, tutor dative. Reason, the pupils are with them seven years; and albeit they were past 7, the tutor is father brother *et aliqui successurus* to them, and is a poor man, and so suspect; and eiked, that the assignee by Forrester has divers actions against the pupil competent to him as successor to their father, who was intromitter with the cedent's gear; whilk actions he man renunce before he can pursue as tutor; and he craves the bearns, that he may exhaust their goods, by their entertainment, the goods confirmed being only £.400, the annual whereof will scarcely entertain them; and she, being mother, is content to entertain them on the annual, or the half of the sum. The Lords, after they had found the letters orderly proceeded, notwithstanding of the hail reasons, except the last member of the eik, anent the entertainment, they fand that offer to entertain the bearns upon £.20 libelled relevant, she finding caution to relieve the tutor of their entertainment; therefore assigns a day to find caution, and continue the matter in the meantime.

Clerk, Hay.

Nicolson MS. No. 49. p. 337.

1623. February 6. WATSON against WATSON.

No. 84.
How far the
tutor liable
for insolvency
of debtors.

In an action of tutor counts, Watson against Watson, the Lords found that the tutor ought not to be answerable for any debts owing to the minor by persons *qui non erant solvendo*; and that his not doing of diligence, by intenting of process, and raising of charges or letters of horning against them, could not burden him, nor make him subject to the pupil for his omission; in respect whatever should have been depursed in pursuing of such debts, was but unprofitable spending of the minor's money: And therefore the Lords found the tutors' allegiance relevant, viz. The debtors were not able to pay; but astricted the tutor to prove by the neighbours, and such others who knew the debtors, that they were repute and known in the country, to be unable either in lands or goods, to satisfy the debt owing to the minor; which being proved, the Lords declared it sufficient to liberate the tutor, albeit he had done no diligence; but if the minor would allege, that the debtors were *solvendo* in lands or goods, then the Lords would prefer that to the allegiance of their inability alleged by the tutor, and admit to the minor's probation to elide the tutors' exception of their insufficiency; which allegiance of their sufficiency being proved, they found the tutor's negligence a sufficient cause to make him answerable for the debt.

Item, in this same process they admitted an article of defalcation, founded upon the tutor's entertaining of the minors after the expiring of the years of the tutory, and divers years after they had chosen curators; and found that the entertainment