

No 44.
account book,
though not
contained in
the inventory
of the de-
funct's testa-
ment, being
contracted
within three
years of his
decease.

defenders, as tutors and curators to the said Elizabeth, liable for the value of the goods and others not bearing annualrent, belonging to the defunct; and that they ought to be stocked and employed for annualrent within a year after the defunct's decease, and that the annualrents of the sums due during the tutory ought to be stocked and employed for annualrent, from the expiry of the tutory; but that they as curators were not obliged to stock the annualrents due during the curatory, in respect their minor was married during the currency of their curatory; find the tutors liable to diligence for all bonds and tickets, whether contained in the inventory of the defunct's testament or not; but find them not liable for accounts not contained in the inventory foresaid, in respect the said inventory was given up by the defunct's own mouth, and John Steuart was ordained to supply the omissions therein; and refused to allow the defenders expenses, in respect they have not made inventory, conform to the last act of Parliament in 1672.

Then Dalgardno having given in a bill against this, the LORDS, on the 11th March, having considered it with the answers, they found the tutors liable for all the accounts in the defunct's count-book, albeit not contained in the inventory of the defunct's testament, being contracted within three years of the defunct's decease; and as to other accounts preceding these three years, before answer ordain the pursuer Dalgardno to condescend what of the debtors therein contained were alive within year and day after the tutors' accepting of the office, so as they might have done diligence, and referred the counts to their oaths.

Fol. Dic. v. I. p. 241. Fountainball, v. I. p. 275.

* * * See this case by Harcaise, *voce* PRESUMPTION.

No 45.
A tutor ad-
judged an
estate for a
debt due to
his pupil.
The Lords
found he had
done suffici-
ent diligence
to exoner
him, though
moveables
were condes-
cended on,
which he
might have
affected.

1693. February 15.

CATHCART against BROWN.

SUNDRY points in the count and reckoning between Cathcart of Carleton and Ann Brown his Lady, against Sir Patrick Brown of Colstown, were reported. The Lords finding the practice had varied in relation to cutting off tutors or pro-tutors who made not an inventory from their expenses; some making them only to lose their personal expenses, (though the President thought no tutor, even making an inventory, could claim these,) others thinking the certification of the 2d act of Parl. 1672 of no value, if it did not extend to all, whether to the pupil's utility or not, as obtaining decreets, confirming the testament, adjudging their debtor's lands, &c. therefore they ordained the several decisions in the case of Gray and Cruikshanks, and the Lairds of Niddry, Preston-grange, and Craigleith; *See* APPENDIX; and Burnet, *voce* TUTOR AND PUPIL, to be produced; that the Lords might take an uniform course in time coming. The 2d point, was about some accounts of law affairs paid to John Smart; the Lords allowed him to be examined thereon. The 3d was, if his adjudging Buttler of Kirkland's

estate, for a debt due to his pupil, was sufficient diligence to exoner the tutor when there were moveables which he could have affected; and if for that neglect he ought to take that right to himself, and make it up to his minor. THE LORDS found he was not bound to have discussed these moveables, but that his adjudging was sufficient; for, besides the loss in apprising moveables, it crumbles and breaks a principal sum,

No 45.

1693. *February 16.*—THE LORDS advised that point delayed on the 15th current, between Carleton and Colston, and found, that a tutor not making inventory lost only his personal expenses, but not those that were profitable; for they thought he could not be in a worse case than a *prædo*, who got allowance of necessary expenses; but the President and others answered, the act of Parliament had made the difference, and imposed this certification *in modum pœne* on such fraudulent tutors; and if this should be interpreted to be no more than the loss of their personal expenses in attending and going about the pupil's affairs, it would be no check at all, but would frustrate the said useful act; so a charge should never be constitute against a tutor, except what he pleased to make himself. THE LORDS, though they assoilzied Colston in this special case, because of the circumstances that he had not malversed in his office, yet they were proposing to make an act of sederunt for the future, that tutors neglecting to form inventories should lose all their expenses whatsoever. *See TUTOR AND PUPIL.*

Fol. Dic. v. 1. p. 242. Fountainball, v. 1. p. 560. 561.

1696. *January 16.*IRVINE *against* SPENCE.

No 46.

A TUTOR'S cautioners being pursued for the tutor's intromissions in not doing diligence against some of the pupil's debtors; and an answer being made that that he was stopped by the surcease of justice in November 1688, and died shortly thereafter; besides, that many of the debtors were insolvent, so that it was casting away money to pursue them;—the LORDS thought it too strict to require diligence of the tutor, in this circumstantiate case, and therefore allowed the cautioners to prove, that the debtors were then habite and repute insolvent.

Fol. Dic. v. 1. p. 241. Fountainball.

* * * *See this case, No 37. p. 501.*

1699. *July 7.*M'MURDOCH *against* FINDLAY.

No 47.

WHITELAW reported Elizabeth Macmurdoch against Robert Findlay, tenant in Coats, her late tutor. He and Mr George Campbell having been conjunct

Co-tutors are not liable for one another's debts.