

The Lords found, That the de[Mor3716327-024] tutor to the minor for the reserved two chalders of victual 9 ed by James Forsyth *tutorio nomine*; but, for the defender's fu ned the pursuer to establish a title in her person as executrix to thereby she may discharge the defender, upon payment.

No. 248.

*Forbes, ft. 294.*

1709. June 11.

BRUCE *against* FORSYTH.

No. 249.

No allowance given to a tutor for incidental personal charges in the pupil's affairs not particularly instructed, in respect inventories were not given up, in terms of the act of Parliament 1672; although the tutor had done the equivalent, by signing an inventory of the pupil's whole estate, writs, and evidents, in presence of the nearest relatives on the father's and mother's side, and giving up the said inventory to be kept by them as a charge against him.

Found, That the pupil must give the tutor allowance for cess, teinds, and feu-duty, upon procuring declarations from the collectors of the cess, and the chamberlains of the titulars and superior, that such cess, teind, and feu-duties were paid, and finding caution to relieve the minor thereof, although the particular receipts were not produced.

*Forbes.*

\* \* \* This case is No. 49. p. 3512. *voce* DILIGENCE.

1710. February 8.

WILLIAM RANKINE, *alias* LITTLE of Libertoun, *against* LEWIS JOHNSTON and HENDERSON.

William Rankine, pursues Lewis Johnston and Henderson, as his tutors-testamentary, to count and reckon for their administration; and he charging them for not doing diligence against his debtors and tenants, they alleged, by the nomination they are made only liable to count for their actual intromissions, and not for diligence and omissions, and so that quality and restriction must be the only rule of counting. Answered, That clause is against the very essence and nature of a tutory, as it stood established by law preceding the act of Parliament 1696, where parents are allowed to dispense with that exactness, to encourage tutors to accept; but prior to that law there was no such allowance. The law deferred so much to the choice of parents, as to relax those nominated by them from the oath *de fideli* or finding caution, but never allowed them that they should not be answerable for such diligence, as a prudent man uses in his own affairs; and if any

No. 250.

How far tutors and curators ought to be liable for omissions.