

1665. *December 20.*      *BOYDE against TAILZEFER.*

IN the case betwixt Boyde and Tailzefer, a pupil being convened as behaving himself as heir by intromission, &c. because his tutor in his name did intromit, by giving discharges *nomine tutorio*; FOUND, This intromission of the tutor could not bind a passive title on the pupil, in respect *pupilli non habent animum gerendi se pro hærede*; but declared the tutor liable for what he had intromitted with, according to the extent thereof.

*Act. Dinmuire. Alt. Maxwell.*

*Advocates' MS. folio 55.*

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ABOUT this time also, FOUND, that one being infest *cum curiis*, though base, may hold courts.

*Act. Lockhart. Alt. M'Keinzie.*

*Advocates' MS. folio 55.*

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1666. *January 1.*      *LADY BUTE'S Chaplain against Her SON.*

THE lady Bute, after proclamation with her own chaplain, gave a discharge of the half of her jointure in favours of her own son. The chaplain, after the marriage, reducing this discharge, because granted after the proclamation of the bands of marriage betwixt him and her; by which the lieges were put *in mala fide* to contract with her to his prejudice; and she not being *sui juris* the time of the discharge, it cannot bind him:—

ANSWER,—He knew of that discharge the time of the granting thereof; and so he knowing, and not declaring his dissent before marriage, that must import ratification and homologation of that deed done by his wife, then his affianced spouse; because, *cum prohibere potuit non voluit*, and his silence imports a consent.

This the Lords repelled, and reduced the discharge, and noway found his knowledge to import a consent; for though he knew it, yet that cannot prejudge him in law from seeking the ordinary remedy in law, *vis.* to reduce; since, as he knew it, so he knew it to be null, and noway obligatory.

*Act. Maxwell. Alt. Wedderburne.*

*Advocates' MS. folio 55.*

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1666. *January 20.*      *STEVIN against YOUNG.*

IN this case, Stevin and Young and Barnes, the relict, FOUND that their being but one daughter gotten of a marriage to whom sums of money were provided by the contract, that this daughter could not be served heir of that marriage; there