

(DUE BY TUTORS AND CURATORS.)

1665. January 27.

MR WILLIAM KINTOR, Advocate, *against* JOHN BOYD, Bailie in Edinburgh.

MR WILLIAM KINTOR and John Boyd having both adjudged the lands of Mountlothian, pursue mutual reductions of each others rights. Mr William's right was upon a decret *cognitionis causa*, against the apparent heir renouncing; against which John Boyd *alleged*, That the adjudication was null, proceeding upon a null decret *cognitionis causa*; *imo*, In so far as it was libelled at the instance of Kintor, as assignee by his brother, who was heir to his father, and executor, and neither retour nor testament produced; and so was null, for want of probation.—The pursuer *answered*, That he had now produced, in supplement of the decret, the writs.

THE LORDS sustained the decret only as *ab hoc tempore*.

2<sup>do</sup>, Boyd *alleged*, That the decret *cognitionis causa* proceeded on 600 merks, which was heritable by infestment, and contained clause of requisition, and no requisition produced.

THE LORDS found the decret null, *pro tanto*, and to stand for the rest, being upon diverse articles.

3<sup>tio</sup>, Boyd *alleged*, That the said decret ought to be reduced, in so far as it proceeded against the cautioner of a tutor, for payment of the annualrent of his pupil's money, during the tutory, and for the annualrent of that annualrent, *a tutela finita*, because the tutor had uplifted, at least ought to have uplifted, and employed the same for the pupil's behoof, *ex officio*.—It was *answered*, That albeit tutors are obliged for their pupil's rent, which are in tenants hands, yet not for the annualrent of their money, being in secure hands then; and now if the tutor had lifted it, it would have been lost, he being broken, and the cautioner also; and the debtors being great men, as the Marquis of Hamilton and Lord Burghlie, they would easily have suspended, and lost the pursuer's pains.

THE LORDS found, That tutors were obliged to uplift their pupil's annualrents, though the creditors were secure, and to employ them for annualrents, but not for each year they were due, but *ante finitam tutelam*; because, though he had them, he was not obliged every year to employ them severally, and so sustained the decret.

4<sup>to</sup>, Boyd *alleged*, That the years of the tutory ought to have been proven, which was not; and so the decret is null.

THE LORDS sustained the decret, seeing it was libelled *in communi forma*, unless it were alleged, that some of these years were *post finitam tutelam*; here a testificate of the pupil's age was produced.

*Fol. Dic. v. I. p. 39. Stair, v. I. p. 258.*

No 40.  
Annualrents of sums falling due *pendente tutela*, are to be accumulated into a principal sum bearing interest, but once during the tutory.