

No. 155. That the tutrix had priced the same, and behoved to accept them at that price; and that she ought to have done diligence to have sold them; and executors are never liberated but upon payment of the price.

The Lords found, That albeit executors are countable to creditors always for the price, yet not so to the children; and therefore if it was visible that the ware was old, and could not be sold, wherein the tutrix was at the loss of her third, they found the same should be accepted; but, in that case, they found the tutrix liable for any greater price she got than that contained in the testament. The *second* point was, What diligence the tutrix should be liable for, whether registered horning were sufficient, or if pointing and appricing behoved to be used?

The Lords found, That horning would not be sufficient in all cases, but according to the condition of the debtors; and therefore ordained the parties to condescend thereon.

*Stair, v. 1. p. 385.*

\* \* See the sequel of this case, No. 35. p. 500. *voce* ANNUAL-RENT.

No. 156. 1666. *November 9.* L. TOUCH *against* SEATON.

Found, That a tutor or curator pursuing *ante redditas rationes*, as assignee to a debt due by the minor, was presumed to have acquired the same *nummis pupilli*, for the pupil's use.

*Harcarse, No. 11. p. 295.*

No. 157. 1666. *December 7.* M<sup>c</sup>KENZIE *against* FAIRHOLM.

A father, as administrator in law, cannot be *auctor in rem suam*.

*Stair. Dirleton.*

\* \* This case is No. 72. p. 8959. *voce* MINOR.

No. 158. 1667. *July 8.* M<sup>c</sup>BRAE *against* M<sup>c</sup>LAINÉ.

In this process, being for removing a tutor suspected, upon many grounds, and in special, that the tutor's father had been tutor to the pupil's father, and had not counted, and that the tutor and his near relations had questions and actions of great importance with and against the pupil,

The Lords inclined, That another friend should be joined to the tutor; but no answer was given by the Lords to the dispute; only the pursuer's procurators got a time to condescend upon a person fit to be joined.

*Dirleton, No. 90. p. 37.*