

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.