

of the decay of a merchant's credit, and likewise on a horning, and on an inhibition.

No 47.

It was *replied*; That tutors are all liable *in solidum* for diligence in their administration; and consequently are mutual cautioners for the administration of their co-tutors; but they are not cautioners for each others debts; and therefore, if money be lodged in the hands of a co-tutor, of a sufficient visible fortune and credit, whatever happen to such a debtor, the remanent tutors are no more liable for him, than for any other debtor, especially where the money was lent by the pupil's father, who did nominate Mr George Campbell a tutor, *sine quo non*; and the defender was diligent to receive yearly annualrent, and could not be obliged to uplift the principal. *2do*, As to the diligence, they were all quickly paid without noise, and the defender neither knew of them, nor was obliged to know, there being no course of diligence, and the debtor's credit continuing always good, in so much as most provident and exact men of the kingdom lent him money before he broke.

'THE LORDS found, That co-tutors are not mutually liable for one another's debts, but only for administration of their office; and sustained the defence, that the co-tutor was held solvent, till he broke of a sudden, and that other men, known to be cautious and provident, lent him money shortly before he broke.'

*Dalrymple, No 19. p. 22.*

1702. February 11.

ELPHINSTON *against* MILNE.

ELPHINSTON of Airth against Sir Robert Milne, late of Barnton, his tutor, for omitting to do diligence against the estate of Grange, for the sum of 22,000 merks, and so craved he might be liable for that omission. *Alleged*, The debt being an heritable bond granted by the Lady Airth, and Hamilton of Grange, her husband, bearing infestment forth of the lands of Airth for security of that sum, it is not only a dubious question, but appears clearly to have been Airth's own proper debt, and so the tutor was neither *in dolo* nor *culpa*, in not pursuing Grange for the same; and it would be an insuperable burden if tutors were obliged to cast out their pupil's money in pursuing debts not belonging to them. *Answered*, If dubiousness of rights were a sufficient excuse to liberate tutors from diligence, it would open a door to let them all escape, and he ought to have taken advice of lawyers, and raised a process and tried the validity thereof. But, *2do*, It appears to have been Grange's debt, because towards the payment of it he set afterwards a tack of his own coal. THE LORDS thought the proper method here was first to determine whose debt this originally was, whether Airth's or Grange's; but, though Grange was cited to compear *incidenter* in this process, yet he and his creditors being absent, the Lords forbore to decide that point, and went to the other, whether in this circumstantiate case the

No 48.

The dubiety of a pupil's right, found to be no ground of defence upon which a tutor could seek to be exonerated for not having done diligence.

No 48.

tutor could be liable for omitting to do diligence against Grange's estate for this debt ; and the plurality found him not liable, but all agreed that the dublety of a pupil's right was no ground nor defence, whereon a tutor or curator could seek to be exonerated from not having done diligence for trying to recover the same.

*Fol. Dic. v. 1. p. 241. Fountainball, v. 2. p. 144.*

1709. June 11.

MRS GRISSEL BRUCE LADY RIDDOCH *against* HUGH FORSYTH of Garvel.

No 49.

A tutor was found liable for annualrents of the pupil's money unuplifted by him during his office, and not allowed to discharge himself with the annualrents, yet resting in the hands of responsible debtors ; but the Lords ordained the pupil to furnish him with the bonds for procuring payment of these outstanding annualrents.

IN the action of compt and reckoning for tutory intromissions mentioned *voce* TUTOR AND PUPIL, at the instance of the Lady Riddoch against Garvel ; the tutor was found liable for any annualrents of the pupil's money run on unuplifted by him during his office, and not allowed to discharge himself with the annualrents, as yet resting in the hands of responsal debtors ; though he offered warrandice and caution that they are not uplifted ; in respect law obligeth tutors to state their pupil's annualrents in a principal sum bearing annualrent once during their office ; and warranting the same to be still resting, doth only found a second plea to the minor upon the tutor's warrandice. But the pursuer was ordained to furnish the defender with the bonds for procuring payment of these outstanding annualrents. And the defender was to have allowance for cess, teind, and feu-duty of these years, for which he holds compt for the rent of the land, upon procuring declarations from the collectors of the cess, the chamberlains of the titular of the teinds, and superior of the lands, that the cess, teind, and feu-duties of such years were paid, and finding caution to relieve the pursuer thereof, albeit the defender had not the particular receipts to produce. But he got no allowance for incident personal charges in the pupil's affairs, not particularly instructed ; in respect inventories were not given up in the terms of the act of Parliament 1672. Albeit it was alleged that the tutor had done the equivalent, by signing an inventory of the pupil's whole estate, writs and evidents, in presence of her nearest relations on the father and mother's side, and giving up the said inventory to be kept by them, as a charge and check against him.

*Fol. Dic. v. 1. p. 241. Forbes, p. 331.*

1710. December 14.

SMITH *against* SMITH.

No 50.

A father gave up, in the inventory of debts due to him, a sum promised by his wife's brother, over and

MR JOHN SMITH of Brousterland, disposes his land-estate to William, his eldest son ; and, having five children besides, he grants a bond of provision, whereby he distributes 13,000 merks among them, payable after his decease, conform to the proportions he divides among them ; and then he adjects this clause, ' and in case any of my foresaid children die without heirs lawfully pro-