

- No. 160. same to have been so *ab initio*, unless it were positively proved, that the money, when lent, was the father's; and found, that the father's assignation, as lawful administrator, could not exclude the son; but that point, whether the debtor's paying to the father's assignee, during the son's pupillarity or minority, was neither positively alleged by the parties, nor considered by the Lords.

Stair, v. 1. p. 494.

1668. *January 11.* GRANT *against* GRANT.

No. 161.

A tutor is not liable for the value of services of the pupil's tenants, by harrowing, plowing, shearing, &c. though he receive these services in kind, because he could not force the tenants to pay the price for the same.

Stair.

* * This case is No. 313. p. 12172. *voce* PROCESS.

1669. *July 22.*

NAPIER, and DR. BALFOUR, her Husband, *against* MR. WOOD.

No. 162.

Wood being pursued, as heir to his father, who was one of the tutors to the Doctor's wife, for count and reckoning, there were produced, for instructing the charge, two confirmed testaments, wherein the defender's father was tutor nominated. It was alleged, That the testaments could not instruct the charge, because the inventory was not given up by the tutors, but by the relict; and therefore the bonds themselves ought to be produced for instructing the debts. The Lords notwithstanding found the testaments sufficient to instruct the charge, seeing the tutor not only was nominated in the confirmed testament, but did administrate, and therefore he himself was obliged to make forthcoming the bonds contained in the inventory.

Gosford MS. p. 75.

1669. *July.*

SUTTIES *against* —————.

No. 163.

In what manner the tutor is to be chargeable with annual-rents.

In the action *tutela*, Sutties *contra* the heirs of the deceased tutor, who had died *durante tutela*, the Lords found the defenders liable for annual-rent of house and land-rents, consisting in money from the next term (*viz.* half a year) after the terms of payment. But if the rents were victual, they allowed the tutor a whole year to uplift, and employ the same on annual-rent, or do diligence therefor; and that he was obliged to have uplifted and employed, or done diligence in the respective times mentioned. *2do*, But it was found, that the tutor was not bound