

(DUE BY TUTORS AND CURATORS.)

1673. February 27.

DOUGLAS against GRAY.

IN a pursuit at the instance of Isobel Douglas, against the Heirs of a Tutor, the question being, Whether a tutor was obliged to lift and employ the annualrents of his pupil's means, that were run before the defunct's death, in respect that it hath been oftentimes found, That as to the current annualrents during the tutory, the tutor is not obliged to employ the same, or pay annualrent therefor, during the tutory, but to leave them employed for annualrent at the end of the tutory :

THE LORDS found, That tutors were obliged to lift and employ annualrents due before the tutory, within a year after the acceptance of the tutory, or to do diligence therefor, or otherwise to be liable for the annualrent of the same.

*Fol. Dic. v. 1. p. 39. Stair, v. 2. p. 181.*

No 36.

Tutors must uplift and employ annualrents due before the tutory, within a year after acceptance.

1696. January 16.

IRVINE and OLIPHANT against SPENCE.

CROCERIG reported Irvine of Inchray, and David Oliphant his tutor, against Thomas Spence, as cautioner for Cleghorn, the former tutor.—THE LORDS found the tutor was bound to stock the annualrents due to his pupil preceding his acceptance into a principal sum, within a year after his entry to the office, and from that time was to be liable in annualrent ; and, as to mails and duties of lands and other rents, found he was in like manner countable within a year after they were payable and due ; and that *laxamentum temporis* was allowed tutors to find hands, and lend out their pupil's means, *cum nummi pupillares non debeant esse otiosi* ; but for annualrents of sums falling due *pendente tutela*, they were not to be accumulate into a principal sum to bear annualrent, but once during the tutory or curatory ; and so they were only countable for the *usura usurarum* of such *post finitam tutelam et curatellam*.

Then they insisted against him for omissions, in not doing diligence against Pitlour, and some other debtors of the minor's.—*Answered*, He was stopped by the furcease of justice, which happened at the Revolution in November 1688 ; and he died shortly after. *2do*, Many of them were insolvent, and it had been the pupil's loss to have cast out his money in pursuits against them.—THE LORDS thought it too strict to require diligence from the tutor in this circumstantiate case ; and allowed him to prove they were then habit and repute insolvent. The next article was, for some expences claimed by the tutor's cautioner.—*Alleged*, He made no inventory conform to the act of Parliament 1672, and so has incurred the certification of losing all his expences.—*Answered*, *Imo*, I am but the tutor's cautioner, and that act is penal, and as it would not militate against his heir,

No 37.

Found as above. This *laxamentum temporis* allowed, in order to find proper hands for lending out the money.