

1665. *January.*LYON *against* FARQUHAR.

No. 144.

Whether a
tutor may up-
lift principal
sums?

John Lyon of Inneresk, as tutor testamentar to James and Alexander Annans, charges Sir Robert Farquhar for payment of 3200 merks of principal owing to umquhile Mr. Thomas Annan by bond, payable to him, and, after his decease, to his two bairns; who suspends, upon this reason, that, by the testament wherein he is tutor nominated, he has only power to uplift the annual-rent; likeas, the principal sum is sufficiently secured by responsal cautioners, and (if need be) the suspender is willing to give further security, at the sight of the Lords. It was answered, That by the testament he is *simpliciter* nominated tutor; and though the after words of the testament give him power to uplift the annual-rent, yet it excludes him not from doing diligence, and to uplift the principal sum; and if he should do no diligence, he would be liable to all hazard; neither will the charger debate, whether the present security be sufficient or not; but it is sufficient that the tutor, being unquestionably responsal, desireth to have power of the money himself, to the behoof of the pupils, that when their necessity shall urge, either for putting them to callings, or otherwise, he may be readier to make it forthcoming, as becometh a faithful tutor.

The Lords sustained the charge for the principal sum.

Gilmour, No. 131. p. 95.

No. 145.

1665. *January.*BOYD *against* KINTORE.

In an action pursued at the instance of John Boyd, Bailie of Edinburgh, against Mr. William Kintore, the Lords found, That albeit a tutor be not countable, in law, for annual-rent of any annual-rent uplifted by the tutor, and resting unexpended at the time of the tutory, yet what annual-rents are resting by him at the expiry of the tutory, or for which he is countable, as not having done diligence for the same against the debtor, the tutor is obliged for annual-rent thereof continually after the time the pupil passes pupillarity.

Gilmour, No. 132. p. 96.

1665. *January 10.* WILLIAM REID *against* JOHN REID.

No. 146.

Exhibition of
a defunct's
writs at the
instance of his
heirsustained,

William Reid pursues John Reid, as his tutor, to deliver all writs belonging to the pupil's father, or which were in his custody and possession *quovis modo*, introduced with by the tutor; who alleged, The pupil could have no interest in any writs but those which belonged to his father.