

a part of the sheep, that would make him liable for the whole sheep of that flock, and the annual rent thereof; and found, that his being designed tutor, contrary to the testament, did not instruct; but the Lords declared, that in cases occurring in all time coming, they would find pro-tutors liable in all points as tutors, and ordained an act of sederunt to be made thereupon and published in the House, to all the whole advocates, that none pretend ignorance.—See No. 141. p. 16269.

*Stair, v. 1 p. 279.*

No. 148.

1665. June.

WATHERSTONE *against* Her Tutors.

In a process pursued at the instances of Margaret Watherstone and John Lermont, her husband, against her tutors, for making count, reckoning, and payment, of her father's moveables pertaining to her, it being alleged, That they could not be further charged than the inventory contained in her father's confirmed testament, it was answered, That the inventory being given up and confirmed by the tutors themselves, the pursuers offered to prove, by their own oaths, that they introduced with more than was confirmed, and greater prices than those confirmed. Replied, That they were not holden to swear contrary to the oath in testament. Answered, *Sibi imputent*, and tutors giving up inventory in name of their pupils, should do it so faithfully as they may not be liable to circumvention and omission therein, else minors would be in no security, who in such cases are more privileged than others.

The Lords repelled the allegiance, and ordained the tutors to swear; but withal, if any thing after oath should be found omitted, or ill appreciated, that the same shall be confirmed by a dative before sentence.

*Gilmour, No. 151. p. 107.*

No. 149.

Are tutors accountable beyond the inventory sworn to?

1665: November 30.

DAVID BOYD *against* ISOBEL LAUDER and JOHN TALZIFER.

David Boyd pursues John Talzifer, as representing his father, on all the passive titles, and Isobel Lauder, his mother and tutrix, for her interest, and condescends upon his behaving as heir, by uplifting of the mails and duties of his father's lands, by his said tutrix. It was answered, That he being a pupil, his tutrix's intromission could not infer that passive title against him, as hath been frequently sustained these many years. It was answered, That was but since the Usurpation; but before, the tutor's intromission did always infer this title, and the pupil could only pursue his tutor for his damage.

The Lords found the pupil not liable on this passive title, by his tutor's intromission.

No. 150.

A pupil does not incur a passive title, by the intromission of his tutor.