1667. *July 5.* M'BRAIR *against* M'BRAIR.

No. 159.

In an action for removing of a suspect tutor, at the instance of the pupil's grandmother on the mother's side, the Lords finding the suspicion to be but light, they, by consent of parties, joined another in the administration of the tutory, to be named by the pursuer.

Here it was debated by the pursuer, that his action was *quasi popularis*.

Harcarse, No. 12. *p.* 295.

1667. *December* 14. JOHN CAMPBELL *against* CONSTANTINE DOUGAL.

No. 160.
Effect of assignation by a father as administrator.

Constantine Dougal having granted a bond to John Houstoun, bearing, that John, for himself, and as administrator for his son Constantine Campbell had lent the sum, and that the same should be payable to the father, he being on life, and failing him by decease, to be payable to Constantine his son, as being his own proper monies, and to his heirs or assignees, Constantine assigns this bond to John Campbell; who having pursued exhibition thereof, and it being produced, insists for delivery. It was alleged for the producer, That it ought to be delivered back to him, because he had right thereto by assignation from John Houstoun, who in effect was fiar of the sum, it being lent to him, and payable to him during his life, and Constantine his son was only heir substituted, as is ordinarily interpreted by the Lords in such bonds or sums lent by fathers, to be payable to themselves, and after their decease to such bairns; *2dly*, The father, as lawful adminstrator to his son, might have lifted the sum in his son's minority, and therefore he might assign the same. The pursuer answered to the *first*, That albeit bonds for money lent by parents, payable to themselves, and such children after their death, be so interpreted, that the fathers are fiars, yet that is only where the sums are the parents' own; but this sum is acknowledged to be the son's own money by the bond itself; *2dly*, Albeit the father, as lawful administrator, might have lifted the sum, yet cannot assign, because that is no proper act of administration competent to tutors or administrators; and executors may uplift sums, and yet cannot assign. The defender answered to the *first*, That the money is lent by the father, not only as administrator, but bears expressly for himself, and that these words as being his own money did not sufficiently prove that it came not from the father, but that, after the father's decease, it would be the son's money. To the *second*, That the conception of the bond being, expressly to pay to the father, warranted him to assign; and the assignee, being his procurator, might lift as well as he, the same way as assignees can lift during the executor's life.

The Lords found the conception of the bond to constitute the son to be fiar, and that at least the words, "as being the son's own monies," presumed the

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 *tutelæ*, 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. 2*do*, But it was found, that the tutor was not bound