

mination made by him. So found by Lord Auchinleck, 12th December 1772, and adhered to by the Court, 16th July 1773, *Rae against Watson*; and the decision held good in another branch of the same cause, 30th July 1775, *Mathie against Watson*. See 8th February 1710, *Lord Liberton against Johnston*, observed by Fountainhall and Forbes: but, it is to be observed, they report the fact somewhat differently.

1769.

GIB *against* GIB.

TUTORS and curators are accountable for insolvencies while they are in office, if culpable neglect can be imputed to them, but not for unforeseen or sudden disasters happening even then: so found 1769, *Gib against Gib*. The case here was, that a tutor, having received payment of an heritable debt due to the minor, from a debtor who offered it, lodged it with Messrs Fairholmes, bankers, at that time in good credit: it was found that their failure, nine months after, did not make the tutor liable. See also Fount., 7th July —, and Dalrymple, 26th November 1699, *M'Murdoch*.

1776. November 20.

MATHIE *against* WATSON.

As to insolvencies occurring after the office is at an end, it would seem that tutors and curators are not liable for these in any event whatever. In a case, *Mathie against Watson*, where this point was disputed, the Lord Auchinleck, Ordinary, 16th January 1776, found, "That, as the debtor was solvent at the expiration of the curatory, and continued to be so for above six years after, therefore the children had themselves to blame for not recovering payment from the debtor, and that the curators were not answerable." On a reclaiming bill, the Lords, 6th March 1776, altered this interlocutor; but, on another reclaiming bill, — July 1776, they altered back again, and found the curators not liable. What induced the Court to pronounce the second interlocutor, finding the curators liable, seemed to be, that, in this case, the management of the curators had been very remiss,—no inventories made up; that the debts pleaded on were due by open account, which ought at least to have been constituted; and that, when action was brought by the children against the debtor, the other curators joined in defending him, and thereby protracted the time until at last he failed in his circumstances. But these things being better explained, the Lords pronounced the last interlocutor, finding the curators not liable. And Lord President observed, that, even as to minors, the decision was a safe one; otherways, by drawing the rein too short round the neck of curators, no persons might be found hardy enough to accept of the office.

20th November 1776, refused a reclaiming petition without answers.