

(DUE BY TUTORS AND CURATORS.)

1682. November 22. WILLIAM LOCKHART *against* JOHN ELIES.

No 41.

Found as
above.
Tutors are
only account-
able for *usuræ*
usurarum, post
finitum tute-
lam.

IN an action, pursued by William Lockhart against Mr John Elies, (mentioned 3d February 1682. See CITATION.) 'THE LORDS, upon Sir George Nicolson of Kemnay's report, before answer as to that point about the accumulate annualrents *finita tutela*, and stocking them then in a principal sum also to bear annualrent, from the expiration of the tutory, till payment; recommended to the said Lord Auditor, to hear the parties procurators further upon this point, viz. Whether what Mr John Elies did and acted in William's affairs, was as his tutor, or as a trustee and interposed person by John; and what Elieston can allege and adduce for clearing himself anent his knowledge or ignorance of John Lockhart's being *in lecto* or *liege poustie*, at the time of his making that right of trust to my Lord Lee and him; and why he did not intent a reduction of the decret of declarator of *liege poustie*, obtained by Lee against William Lockhart, and ordain both parties to produce the practiques they allege upon.'—(See Davidson against Jack, No 45.; Kintore against Boyd, No 40.)

March 18. 1684. The question between William Lockhart and Mr John Elies anent the accumulate annualrent, mentioned 22d November 1682, was this day decided; and the LORDS found Mr John Elies liable for the annualrent of the annualrents after the expiring of the tutory; superseding the extract of this decret till the 1st December 1684, betwixt and which time Mr John Elies may pursue the co-tutors for his relief; and recommend to my Lord Kenmay, auditor, to hear them thereanent. Mr John, for freeing himself of the annuals of annuals, cited Novel. 72. where tutors are not bound, *pecuniam pupillarem seniori exponere, ob periculum sortis in tali casu*; and Davidson against Jack, No 45.; and Boyd against Kintore;* and that he was found a tutor only upon some remote specialties; and that my Lord Lee, as trustee, by virtue of a disposition of trust from John Lockhart the pursuer's brother, managed all; yet the Lords found him liable *pro anatoicismo*. (See CITATION.—TUTOR.)

Fol. Dic. v. 1. p. 39. Fount. v. 1. p. 196. and 282.

* * * The same case is thus stated by President Falconer, under the date 9th March 1684.

IN the action pursued by Mr Lockhart against Mr John Elies, elder of Elliestoun, wherein he craved that Mr John Elies, being found by the Lords to be tutor to him, might count for the annualrent of the annualrent of the pupil's means, since the expiration of the tutory. Mr John Elies having *alleged*, That annualrent of annualrent was reprobated in law: *2do*, That if any was liable, it was the intromitting tutor, viz. my Lord Lee: And *3tio*, That he could not

* Stair, v. 1. p. 303. 4th July 1665. *voce* IMPLIED DISCHARGE AND RENUNCIATION.

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be made liable for the annualrents during the tutory; because the defunct John Lockhart, granted a disposition to my Lord Lee, for the use and behoof of certain persons, to whom he appointed several sums to be paid, and the said legatars were found liable for the principal sum, but absolved from the annualrent, as being *bona fide preceptum*, the disposition of trust being reduced upon the head of deathbed.—And it being *replied*, That by the common law, tutors were obliged to employ their pupil's money upon land, which was better than annualrent: *2do*, That there was in our law no order of discussing or distinction betwixt intromitting tutors and other tutors, but all were *in solidum* liable to the pupil: *3tio*, Mr John Ellis was in *dolo*, he having contravened John Lockhart's disposition of trust to my Lord Lee, and having advised, and obtained a decret of declarator, finding the foresaid disposition to have been granted when he was *in lege pousse*, albeit he was truly upon deathbed; which consisted with Mr John's knowledge:—THE LORDS found Mr John liable *in solidum*, for the annualrents of the annualrent which were due the time of the expiration of the tutory; and found, That he ought to have cleared counts with the curators, and stocked the annualrents that were due to the pupil at that time; and found, That he was not liable to stock any annualrents during the currency of the tutory.

No 41.

President Falconer, No 91. p. 62.

* * * The same case is likewise reported by Sir P. Home.
See TUTOR and PUPIL.

1679. December 2. HAMILTON *against* WILLIAM VEITCH.

A TUTOR compt.—THE LORDS find the tutor must pay annualrent for vic-tual rent and house mails, within a year after they are due; and made no dif-fence betwixt country rents and town rents, though the last are sooner gotten in; and found him not liable for the annual of annualrent of sums of money, till after the expiring of the tutory, for which there is no equity but mere cus-tom.

No 42.
A tutor found not liable for annualrent of annualrent, till after the expiry of the tutory.

Fol. Dic. v. 1. p. 39. Fountainhall, MS.

1688. February 23. THOMAS WILSON *against* FOULIS of Ratho.

THE LORDS, on Castlehill's report, renew the former interlocutor, (See 29th November 1683, No 39. *supra*.) and find the 100 merks modified must be deduct-ed, not at the end of the account, but of every year.

No 43.
Although a tutor *semel in tutela*, must