

(DUE BY TUTORS AND CURATORS.)

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

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No 43.
employ what
is over the
pupil's ali-
ment upon
annualrent, so
as to leave it
bearing an-
nualrent;
there is no
similar obli-
gation on a
curator.

1688. *July 10.* The case of Thomas Wilson's wife against Foulis of Ratho, mentioned 29th November 1683, and 23d February 1688, was decided.—THE LORDS found, What of the pupil's means was in the tutor's hands, he was bound yearly to employ it in annualrent; and though an accumulation of annualrents into a stock, so as to bear interest *fnita tutela*, was required, yet there was no law nor custom obliging a curator to do the like *fnita curatela*, though there seems to be the same parity; and that there was no ground to crave 100 merks yearly for the tutor's incident charges, they not being condescended on; and *eo nomine*, they added 50 merks of yearly augmentation to the aliment. (See TUTOR and PUPIL. See p. 354. of this Dictionary.)

Fal. Dic. v. 1. p. 39. Fount. v. 1. p. 499. 510.

1628. *March 18.* NASMITH *against* NASMITH.

No 44.
A tutor found
liable for an-
nualrent of
his pupil's
money uplift-
ed, whether
heritable or
moveable,
not only until
the expiry of
his office, but
until pay-
ment; al-
though he
had raised an
action to have
his accounts
settled.

IN an action of tutor compts between Nasmith and Nasmith, the LORDS found, That the tutor should pay annualrents to the minors, of all sums pertaining to them uplifted by him, as well sums which were heritable as moveable, not only to the time of the expiring of his tutory, but also of all years continually, to the time that he should make real payment to them of their said principal sums, or else should consign them; notwithstanding that the tutor *alleged*, That he could not in law be subject to pay annualrent for the same, since the time that he intented his action *contraria tutela*, for taking off his compts off his hands, and exonerating of him, at which time he was content to make payment of what he should be found owing, and since that time he could not be found *in mora*; but thereby the course of running of annualrents was sifted, and he cannot be subject therein, seeing he durst not put their money out for profit, but behaved ever to have it ready, as it ever sincefyne was, to be delivered at the ending of his compts for his exoneration; which exception was repelled, and the tutor found debtor in annualrent, ever until payment were made, or consignment.

Act. Hope & Stuart.

Alt. Nicolson & Burnet.

Clerk, Scot.

Fol. Dic. v. 1. p. 39. Durie, p. 363.

1634. *February 22.* DAVIDSON *against* JACK.

No 45.
A tutor up-
lifted his pu-
pil's money,
and died soon
after, before
laying it out
on interest.

ONE Davidson conveyed one Jack in Dundee, as heir to his father, another Jack, who was one of the tutors to the said pursuer, to make payment of 600 pounds, intromitted with by the said tutor, with the annualrent ever since, conform to the said umquhile tutor's discharge, upon the receipt of the said sum from the pursuer's debtor, viz. By the space of 25 years bypast, since the date of