

(DUE BY TUTORS AND CURATORS.)

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