No 43.
employ what is over the pupil's aliment upon annualrent, so as to leave it bearing annualrent; there is no similar obligation 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 *finita tutela*, was required, yet there was no law nor custom obliging a curator to do the like *finita 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.)

Fol. Dic. v. 1. *p.* 39. *Fount. v.* 1. *p.* 499. 510.

1628. *March* 18. Nasmith *against* Nasmith.

No 44.
A tutor found liable for annualrent of his pupil's money uplifted, whether heritable or moveable, not only until the expiry of his office, but until payment; although 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 tutelæ*, for taking off his compts off his hands, and exonering 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 sisted, and he cannot be subject therein, seeing he durst not put their money out for profit, but behoved ever to have it ready, as it ever sincesyne 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 consignation.

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 uplifted his pupil's money, and died soon after, before laying it out on interest.

One Davidson conveened 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

the difcharge; wherein the defender *alleging*, That he could not be conveened *in folidum* for the whole, becaufe the purfuer had two tutors given conjunctly, likeas the acquittances were fubfcried by them both; and therefore he *alleged* he could only be liable for his own part, and the other tutor fhould be fubject in the other half, efpecially feeing he was the purfuer's own uncle.——The Lords found, That the purfuer might purfue any of the tutors as he pleafed *in folidum* for the whole debt received; for any of the tutor's omiffion would make the tutor liable for all, far more their intromiffion, without neceffity of divifion: And in refpect the defender, the time of his father, (who was tutor,) his intromiffion, was only a pupil of two year's old, and that his father died immediately thereafter, and that his father had not the exercife of the office of tutory, but one year only, and that he could not be acquainted that his father was tutor, nor what deed he had done as tutor, and that there was no purfuit moved againft him all this time thefe 25 years bypaft, but only within thefe two or three years laft bypaft; therefore the Lords found, That he was not fubject to the purfuer in any annualrent, for the fum received by his father as tutor, as faid is, except only for the terms and fpace fince he was cited in this action, viz. By the fpace of two or three year, but for no other term or year preceding; and therefore affoilzied him from all preceding terms. And fo this privilege of minority, or *privilegiatus*, was found confiderable againft another minor; albeit this caufe has no affinity with privileged caufes, tending only (as is requifite in all law) that minor's money, received actually by their tutors, fhould not be kept from the minors idly; and that the mifchance of the tutor's death ought not to prejudge him of the ordinary benefit in law of tutor compts; but the ceffation moved the Lords to affoilzie from the bygone annualrents. (*See Solidum et pro rata.*)

No 45. The heir, an infant at the time, found liable only from the time of intenting action againft him, which was not till after twenty-five years.

Act. ——. Alt. *Rollock*. Clerk, *Gibfon*.

Fol. Dic. v. 1. *p.* 40. *Durie, p.* 705.

1627. *February* 24. Guthry *against* Guthry.

No 46. A tutor uplifted his pupil's money, bearing intereft, and gave his own bond. His heir liable, not from intenting action, as in the above cafe, but *inftanter*.

Francis Guthry purfued Margaret Guthry, as heir to her father, who was one of the two curators to the purfuer, for payment of the fum of 2800 merks, which pertained to the purfuer, and was lying upon land, and was redeemed by the debtor; and after the redemption, the fum was taken up, and received by the two curators, who, and each one of them, bound and obliged them conjunctly and feverally, at the time of the uplifting thereof, to make the fame forthcoming to the purfuer, their minor; and therefore the purfuer called this defender, as heir to her father, who was one of the faids two curators, to repay to him the faid principal fum, with the yearly profits fincefyne. This purfuit was fuf-