

(DUE BY TUTORS AND CURATORS.)

No 49. of the sum and duties uplifted by her, as well as if she had continued to be tutrix.

*Spottiswood*, (TUTORS and CURATORS.) p. 347.

\* \* \* See the same case from Auchinleck, No 23. p. 490.

No 50.  
Found in like  
manner.

1637. July 5.

M'DUFF against M'DUFF.

ONE M'Duff being confirmed executrix to her brother John M'Duff, and pursuing the executors of umquhile M'Duff, which umquhile M'Duff was nearest of kin to the said John M'Duff, the pursuer's brother, and who died minor, and which umquhile M'Duff was that person, who, being nearest of kin, as said is, ought to have been tutor to the pupil; to pay to her the sums and goods intromitted with by him, together with the profits thereof since the time of his intromission: In which action it being controverted, if this defender, as executrix conveyed to the defunct, or the defunct's self, if he were living, could be conveyed as subject in annualrent for the monies alleged intromitted with by him, seeing it was alleged he was never tutor, and so not liable in annualrent.—THE LORDS found, That the defunct being that person, who might have been tutor in law to the pupil, albeit he was not tutor, yet having intromitted with the pupil's means, and so as pro-tutor behaving himself, was liable in annualrent to this pursuer, for all years since his intromission, for *nummi pupillorum non debent esse otiosi*, and so the LORDS repelled the allegiance, and decerned for the annualrent.

Aft. *Nairn*.

Alt. ———.

*Fol. Dic. v. I. p. 40. Durie, p. 848.*

\* \* \* Compare this Division of ANNUALRENT, with the Title TUTOR and PUPIL.

## ANNUALRENT due by FACTORS and their CAUTIONERS.

1631. January 29.

HUME against HUME.

No 51.  
The relict  
and heir of a  
factor found  
not liable to  
pay the an-  
nualrent of

ELIZABETH HUME, relict of umquhile Robert Hume of Corfrig, who, and her husband for his interest, had obtained decret against one Hume, her father's brother, for payment of certain goods and gear, pertaining to her by her father's testament, wherein this Hume, who was decerned executor nominate and con-