

(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.

Act. *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-

(DUE BY FACTORS.)

firmed, and who had also accepted a factory from the said Elizabeth's tutor, the said Hume being deceased, and also the pursuer's husband; she now pursues the relict of the said factor, as intromittatrix and executrix to her husband, who before was decerned, and his heirs, to make payment of the annualrents and profits of the sums decerned, of all years and terms continually since the said factor's intromission, and in time to come, while the payment be made:—Wherein the LORDS found, That neither the relict of the said factor, nor his heirs, were subject in law to pay the said profit, the sums being intromitted with by the said factor, by the space of thirty years since, or thereby, albeit decret was recovered in *anno* 1620, or thereby, against the factor for the principal sums; but found, That her action for the said profits was competent to her against her own tutor, and not against the heir or executor of the factor.

Act. ———.

Alt. *Craig.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 40. Durie, p. 561.*

No 51.  
principal sums  
for which he  
had been  
liable.

\* \* By act of Sederunt, 31st July 1690, it is declared, That where there is a sequestration of rents, and a factor named by the Lords, that the factor shall be liable for annualrent of what rents he shall recover, or by diligence might have recovered, within a year after the same are due, in respect the factor cannot safely pay to any of the competitors until the preference be concluded; and in like manner, that no aliment shall be granted to debtors or persons having right to a reversion or to the property after the distresses are purged, unless it be evident that there is a superplus rent over and above all the annualrents of the person's competing.

Act of Sederunt 1690,  
respecting  
judicial factors.

*Acts of Sed. p. 186.*

1701.

CREDITORS OF GARDEN *against* ROBERTSON.

IN a process at the instance of creditors on a bankrupt estate, against the factor, wherein they craved, That he might be liable for annualrent, within a year after the rents fell due, in the terms of the act of sederunt, ult. July 1690.—THE LORDS found the factor liable in annualrent, conform to the said act, and so confirmed it by a decision; and this though the fortune was small; and the creditors usually applied for warrants upon the factor for their annualrents, which he could not quickly answer, unless he were allowed to keep money in his hands.

*Fol. Dic. v. 1. p. 40. Fountainhall, MS.*

No 52.  
A factor found  
liable for annualrent  
from a year after  
the rents fell  
due.