

(DUE by *lucrati*.)

THE LORDS founds, That Gladney the suspender was liable for the annualrent of the sums contained in the money bill, accepted by the charger, from the time he paid the same; and that in lieu both of damages and expences.

No 88.

For Robertson, *Graham*.Att. *Leith*.Clerk, *Robertson*.*Fol. Dic. v. I. p. 43. Bruce, No 15. p. 20.*

1736. June 29. PATRICK VANSE against JOHN VANSE.

THE deceased Colonel Vanse having settled his estate upon his issue of a second marriage, the said Patrick Vanse, his eldest son and heir, brought an action against them as heirs of provision; one of the articles of which, was a claim he had against his father for intromitting with some pay due to him while an infant, as an ensign in a regiment, to which the colonel was paymaster.

The *defence* proponed against this demand, was: That his father had alimanted him in his family, which behoved to compensate the pay. — But the LORDS found the aliment presumed to have been furnished *ex pietate*; and therefore could not compensate or extinguish the claim. — After obtaining this judgment, he *insisted*, in the next place, That the Colonel having received that money as tutor and administrator in law to him, behoved likewise to be accountable for the annualrents thereof from a year after the several dates of his intromissions.

*Answered* for the defender: That there was a great difference betwixt a father, who acts as administrator in law, and other tutors; seeing he is not liable for omissions, whereas they are: And that such is the case, is a necessary consequence of the act 1696; for, as he has thereby a power to name tutors and curators with that quality, he must be supposed to act under the same character himself.

*2do, Et separatim*, though it has been found, That the aliment furnished by the father to the son does not extinguish his claim to the pay; yet it does not follow, that the aliment furnished by the father does not exhaust the claim for interest; for, if the father shall be supposed subject to annualrents, it is impossible to imagine that he designed to aliment his son *gratis*. Nor will the law impute the aliment to the *pietas paterna*, if the son had a fund bearing interest: And, although it might have had some influence in determining the first point, That the aliment given to an infant bore no proportion to the pay; yet that circumstance is of no weight in this question, since it must far exceed the interest claimed: Nay, a tutor, in the common case, is only liable to lay out his pupil's rents at interest, in so far as they exceed the expences of his aliment. And it has been found, That a father is not obliged to pay the annualrent of a legacy belonging to his son which was uplifted by him, seeing he alimanted him, 15th December 1668, *Windram*, (*Stair*, v. I. p. 570. *voce* PRESUMPTION, *donatio namque præsumentur*.)

No 89.

Aliment furnished by a father to an infant, does not compensate his intromission with the Son's Money. Such intromission as administrator in law, found not to subject him to annualrent.

(DUE by *lucrati.*)

No 89.

Patrick Vanse *replied*: That his father was liable to the same duties and obligations in every respect with other tutors; as was determined 4th February 1665, Beg, (Stair, v. 1. p. 264. See TUTOR and PUPIL.); where it was found, That the father was liable for annualrent of his own third of moveables, which his son claimed in the right of his mother: And the same thing ought to take place here; as it would not be denied, that the Colonel laid out the money profitably, either upon annualrent or purchasing land. Neither can the difficulty with respect to the aliment which occurred in determining the first point, have any influence upon this; seeing, however that had been decided, still this demand, with respect to the annualrents, would have remained, at least in part.

THE LORDS found both defences sufficient to liberate from the claim of annualrents.

*C. Home, No 27. p. 51.*

1748. June 25. PARKHILL *against* BATCHELOR.

No 90.  
Where one has in his hands another person's money, not as a debt, but as that person's property, annualrent is due as the *profit* of the money.

IN the question, whether annualrent be due, there is a material difference, whether the money be due as a debt, or if it be due as the pursuer's property in the hands of the defender. Where it is due as a debt, then regularly no annualrent is due upon it *sine pacto*. But where one has got into his hands another person's money, then annualrent, as the profits of the money, is no less due than the money itself.

For which reason it was, that in this case Charles Batchelor having got 500 merks from John Parkhill's wife, during her marriage with John Parkhill, which the law presumed to have been her husband's money, he was decerned to repeat to Parkhill, not only the 500 merks, but the interest of it from the time he got it. (See HUSBAND and WIFE.)

The like was some years ago found, Mr Thomas Rigg *contra* John Cunningham of Enterkine.

*Fol. Dic. v. 3. p. 30. Kilkerran, (ANNUALRENT.) No 3. p. 29.*

1767. January 21.

WILLIAM ELLIOT and OTHERS, Creditors of Edward Atchison, *against* GEORGE MALCOLM.

No 91.  
Interest found not due on sums arrested.

EDWARD ATCHISON possessed the farm of Ewislees, and, on quitting the possession, sold the stocking on the farm to George Malcolm at an appraised value; and part of the price was, soon after the purchase, paid to the proprietor for rents due;