

No 15.

the same way as a tutor or curator, which the LORDS sustained not, these being special privileges of pupils and minors against their tutors or curators only.

Fol. Dic. v. 1. p. 160. Stair, v. 2. p. 733.

1706. January 16.

ALEXANDER AITKEN of Middlegrange, *against* JAMES GOODLET of Abbots-
haugh.

No 16.

Annualrent
of a child's
portion, com-
pensated with
her aliment
while she
lived in her
father's fa-
mily.

IN the action at the instance of Alexander Aitken of Middlegrange, against James Goodlet of Abbotshaugh, his wife's father, for the annualrent of her portion from the sixteenth year of her age till her death;

Alleged for the defender, Absolvitor from any annualrent till his daughter's marriage; because, till then he had alimeted her *in familia*, which compensated the annualrent for so long; and as to annualrents during the marriage, compensation by the expenses of her funeral debursed by the defender conform to a stated account.

Duplied for the pursuer, *imo*, Had the defender's daughter assigned the annualrents of her portion for an onerous cause, or her creditor arrested them, the defender could not have compensated upon the aliment not liquidated before the arrestment, or intimation of the assignation; therefore, *a pari*, the pursuer being assignee *jure mariti*, and his assignation intimated by the marriage, he cannot be put off with compensation upon a debt neither liquidated nor constituted to this day, especially such a general debt as aliment, which differs so vastly in different cases, as to the manner, quantity, and quality; *2do*, If the compensation be sustained, the pursuer takes it off by recompensation upon the principal sum yet resting to his deceased wife; *3tio*, No compensation can be obruded to the pursuer upon his wife's funeral expenses, which must burden her executors to whom she has left means sufficient to defray the same.

Duplied for the defender, It is certain that the annualrent before the marriage was in place of the aliment; and the pursuer, by his *jus mariti*, could be in no better case than his wife, if she had pursued for annualrent after her age of sixteen.

THE LORDS found, That so long as the pursuer's wife was unmarried, and *in familia* with her father, her aliment compensated the annualrent; but that the funeral expenses affect her executors. *See HUSBAND and WIFE.*

Forbes, p. 72.

1715. February 9. GORDON of Badinscoth *against* GORDON of Inverebry.

No 17.

A relict, exe-
cutrix to her
husband, and
tutrix testa-

My Lady Kinnaird having been executrix to the late Earl of Aboyne, her first husband, and tutrix-testamentar to the present Earl, and by virtue thereof

intromitted *, and also insisted in a process for her exoneration. It was further *objected* by the suspender, That she, by several receipts as tutrix and executrix, appears to be debtor to the Earl, and that these *pro tanto* ought to be a ground of retention or compensation.

Answered for the charger, That this charge, proceeding upon a former decret *in foro*, compensation cannot now be obruded, the same being nowise competent for an illiquid sum, after a decret for a liquid one ; her process for liquidation and exoneration as tutrix and executrix, being still a *lis pendens*.

THE LORDS repelled the compensation founded on my Lady's intromission as tutrix or executrix, the same being insisted for in a separate process for liquidation.

Act. Arch. Ogilvie.

Alt. Ro. Dundas.

Clerk, Mackenzie.

Fol. Dic. v. I. p. 159. Bruce, No 63. p. 77.

1749. *January 4.* ROSE of Kilravock, *against* The CREDITORS of KINSTERY.

SIR JAMES CALDER of Muirton disposed his estate, with the burden of his debts, to Hugh Rose of Kilravock, James Sutherland of Kinstery, William Brodie of Coalfield, and Alexander Dunbar of Moye ; with a view, as it would seem, that by the management of these gentlemen, the subject would be equal to the burdens ; and they disposed it, with absolute warrandice, to Rose of Kilravock.

The value of the estate falling short of the debts, the remainder of them which rested unsatisfied were divided amongst the disponees, who mutually became bound to pay the several bonds allotted to each of them.

Kilravock paid a debt undertaken by Kinstery, and adjudged his estate for it ; and appeared amongst his creditors in a ranking and sale raised by them.

Objected to his interest, Compensation by debts paid by Kinstery, which Kilravock was bound to relieve him of.

Answered, Recompensation by a yearly payment of eight chalders of victual to the relict of Sir James Calder, which Kinstery was obliged to relieve him of, effeiring to the proportion of the trust undertaken by him, having disposed the estate with absolute warrandice ; and the victual was stated with interest from Candlemas after the separation of each crop ; to which it was *objected*, That interest ought not to be stated ; whereupon the LORD ORDINARY, 10th July and 12th December, repelled the objection to the stating the account.

Pleaded in a reclaiming bill, Compensation is *de liquido in liquidum*, but the value of the victual was not liquidate till of late, and therefore cannot meet Kinstery's debts sooner than the liquidation.

* See Another branch of this cause, *voce* HUSBAND and WIFE, from which the claim for by-gone annuities mentioned on the margin appears.

No 17.

mentary to her son, after marriage with a second husband, claimed bygone annuities. Compensation was proponed upon her intromissions as executrix and tutrix. Repelled as illiquid.

No 18.

One of two parties having paid money for the other, on which he stated annual-rent ; and the other having paid victual for him ; it was found interest might be stated on the price of the victual.