

(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;