

No 131. no doubt obliged to maintain his younger children till their provisions become due ; and to prepare them for some employment suitable to their rank and abilities, constitutes a very considerable part of this obligation. But under this cannot be included a duty to procure for them a permanent establishment in life. No court of law would oblige a father on this ground to purchase for his child an annuity, a share in a mercantile company, or a commission in the army. Where a father, therefore, makes such a purchase, he is surely entitled to credit for it, and to have recourse to the general rule of law, That *debitor donare non præsimitur*.

The second branch of the pursuer's argument seems ill founded in many respects. The father's obligation to aliment ceased, when the son, without in-croaching upon his provision, was enabled to support himself. It was a possible case, that an ensign's commission, so far from defraying the young gentleman's expenses, might have exposed the father to a greater disbursement than was necessary to support him at home. The father, too, by making these advances before the provision became due, ran the risk of losing the whole by his son's death. All the length, therefore, that this plea of compensation can go, is to take away any claim for annualrent on the sums advanced, and accordingly no demand has been made by the defender on this account.

THE LORD ORDINARY found, ' That the articles furnished by the late Craignish in the recruiting service, and for fitting out the pursuer, were to be imputed in payment, *pro tanto*, of the bond of provision at the time the bond fell due.'

Against this interlocutor Smollet Campbell reclaimed. ' THE LORDS, after advising the petition, with answers for Craignish, adhered ; but remitted to the Lord Ordinary to hear parties procurators on any objections they might still have to any of the particular articles of the account, and to do therein as he should see cause.' And it seemed to be the opinion of the Court, when making this remit, that Craignish's claim should only be sustained as to the sums advanced in the recruiting service.

Lord Ordinary, *Alva*. Act. *Abercromby*. Ait. *B. W. Macleod*. Clerk, *Robertson*.
C. Fol. Dic. v. 4. p. 122. Fac. Col. No 37. p. 58.

No 132. 1791. May 20. STEVEN against SIMPSON.

SIMPSON, a lad of eighteen, apprentice to a ship-carpenter, having disagreed with his stepmother, was taken into the house of Steven a sawyer, who had married his father's sister, and was alimented by him for a year and a half, with the knowledge of his father. Steven, after the father's death, sued Simpson for his aliment, at the rate of 4s. per week. In a suspension of a decree of the Sheriff, who sustained the claim, Simpson *pleaded* That no bargain was made

for any board or aliment either by him or his father; and, that from the near relation, it must be presumed to have been furnished *ex pietate*, as he being an apprentice all the time, and earning no wages, had no means of payment. THE LORDS were of opinion, that the debt was due both by father and son, and sustained the claim. See APPENDIX.

No 132.

Fol. Dic. v. 4. p. 122.

S E C T. IV.

Deeds in favour of a Wife or Child, whether presumed in satisfaction of their legal Claims.

1627. February 24. Ross against LILLIE or KELLIE.

No 133.

A CHILD was not excluded from his legitim, though he had a bond of provision, since it did not bear to be in satisfaction of the legitim.

Fol. Dic. v. 2. p. 143. Spottiswood. Durie.

* * This case is No 2. p. 2366. *voce* COLLATION.

* * A similar decision was pronounced, 16th July 1678, Murray against Murray, No 9. p. 2372. *voce* COLLATION.

1629. March 3. CARMICHAEL against GIBSON.

No 134.

A FATHER being debtor to the son in a legacy left by the mother, and after the father's decease, the father's executor being convened to pay the legacy, it was found, That payment made by the father for binding of the son as apprentice to a craft, ought to be ascribed in satisfaction of the legacy, *pro tanto*, and ought not to be found to have been given *ex affectione domestica*, or *ex pietate paterna*; for it was presumed that he would liberate himself of his debt before he would gift any thing; but this cause was betwixt poor persons, whose substance was mean, and the sums small, the legacy being of L. 80, and the prentice-fee paid L. 60, and the whole gear in the testament not exceeding L. 200 or L. 300, and that was the chief reason of the decision.

Durie, p. 431.