

Upon a reclaiming bill and answers, the Court were much moved with the appearance there was, of advantage having been taken of the very liberal donor by these donees; but thought they could not recede from the rules of law, to give her any relief; especially in the shape the question had come before them; which was not a challenge by a reduction at her instance, but a defence set up in an action against her for payment.

“ THE LORDS adhered.”

Act. *J. Borwell.*

Alt. *A. Elphinston.*

Clerk, *Gibson.*

*Fol. Dic. v. 4. p. 123. Fac. Col. No 164. p. 51.*

1782. February 21. SMOLLET CAMPBELL *against* CAMPBELL of Craignish.

IN 1772, Campbell of Craignish executed bonds of provision in favour of his younger children, and delivered the same to their uncle for their behoof. Among the rest, he obliged himself to pay to Smollet Campbell, ‘ upon his attaining the years of majority, the sum of L. 400 Sterling; and in the mean time, to maintain and educate him in a manner suitable to his station in life.’

In 1775, Smollet, then 17 years of age, and a student at the College of Glasgow, was appointed an ensign in one of the new regiments. On this occasion the sum of L. 150 Sterling was advanced by his father to levy his compliment of recruits. He was likewise furnished with cloaths, a silver watch, and other necessaries, when he left Scotland. He served in America for the remaining years of his minority, and then brought an action against his elder brother, the present Craignish, as representing his father, for the contents of the bond. The defender claimed a deduction of the money advanced for his brother. Against which the pursuer

*Pleaded*; When a father grants a bond of provision, payable at a distant period, and becomes bound in the mean time to maintain and educate his child, there is an implied obligation to set him out in due time to some employment or business, in which he may earn his bread in the future part of his life. The father, in this case, by procuring an ensigncy for the pursuer, did no more than fulfil this obligation; *2do*, Had the pursuer, instead of entering into a military life, remained at college, a much larger sum than was here advanced must have been expended in his support. Since his joining the regiment he has subsisted solely upon his pay. He is therefore entitled to compensate the claim here made out of the funds so saved.

*Answered* for Craignish; The plea here maintained for the pursuer, if recognised by courts of law, would be attended with very heavy consequences to parents and their general representatives. It would in the end be exceedingly prejudicial to the interests of younger children, by discouraging parents from advancing them in the world before their provisions are exigible. A father is

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One granted a bond of provision to his son payable at majority, with an obligation to maintain and educate him in the mean time. The father, before his majority, bought him a commission in the army and paid his outfit. These allowed to be deducted from the bond.

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