

No 65.  
tocher being  
liferented by  
another, the  
Lords ordain-  
ed him and  
his wife to  
assign to the  
creditor as  
much there-  
of, to take ef-  
fect when  
their right  
should com-  
mence by the  
liferenter's  
death.

never be liable for the principal sum, because his *jus mariti* gives him right only to his wife's moveable sums, and so *a pari*, he can only be liable for her moveable debts, for *quem sequitur commodum, eundem debet sequi incommodum*, and no farther; as has been oft decided, betwixt Menzies and Osburn, No 23. p. 5785; Captain Gordon and Cesnock, No 24. p. 5787. and many others.—*Answered*, Whatever be in that principle, it only takes place where the husband is not *lucratus* by the marriage; but here the husband gets 5000 merks of tocher.—*Answered*, This comes not by the father, but is a *peculium adventitium*, gifted to her by her grandfather, and affords no present benefit, being liferented by the mother.—THE LORDS found the husband liable *in quantum lucratus*; but in regard he had not present access thereto, they ordained him and his wife to assign him to as much of that sum, to take effect when their right commences by the mother's death. The third reason of suspension was, that she was minor the time of subscribing the bond, and lesed; for though it bore an onerous cause of her education at schools, yet this is not probative; for there is nothing more easy than to insert a specious narrative of onerous causes in minor's bonds; and here, being *in familia* with her father, he must be liable, and by his consenting could not be *auctor in rem suam*.—*Answered*, The testificate of her baptism is no authentic proof, and the presbyterian parents did then keep their children long unbaptized, till they got a minister of their own persuasion to do it. Next, if she be so ungrateful as to deny his paying the money, and relieving her, and the onerous cause, he will prove her staying at that school, providing it be *cum onere expensarum*.—THE LORDS repelled the minority, the cause of the bond being first instructed and adminiculated to have been *in rem versum*, and for her board-wages.

*Fol. Dic. v. 1. p. 390. Fountainhall, v. 2. p. 422.*

No 66.

1708. July 13.

GORDON against DAVIDSON.

THE husband is liable for annualrent of heritable debts contracted by the wife prior to the marriage, and falling due during the marriage.

*Fol. Dic. v. 1. p. 390. Forbes. Fountainhall.*

\* \* \* See this case, No 25. p. 5789.

1714. January 22.

LOCKHART of Carnwath against EUPHAN DUNDAS, and Mr JOHN DUNDAS of Philpstoun, Advocate, Her Husband.

No 67.  
The husband  
found not  
*lucratus* by  
getting a  
competent

GEORGE LOCKHART of Carnwath, in January 1693, obtained a decret against Catharine Swinton, daughter and heir to George Swinton of Chesters, and