

day is expressed, the term of payment is presently, the term of payment being in favour of the debtor; yet the whole tenor of the obligation is to be considered complexly; and then it will appear, from the subsequent obligation, that the tocher was to be employed to the husband and wife, and longest liver in liferent, which clears the term of re-payment of the portion to be after the husband's decease; though without the foresaid clause, providing the liferent to the husband, it would have been due upon the wife's death.

*2do*, As to the allegiance, That the clause providing the liferent to the husband is qualified with the provisions and conditions above specified, that is the return of the tocher, failing the wife without heirs; the foresaid last clause is also to be considered complexly, and it will appear, that the provisions above specified relate to the return of the portion, but not to the time of returning; for the obligation is to employ the tocher to the husband and wife in liferent, and to the heirs of the marriage, which failing, to the husband's heirs and assignees; then follow these words, (under the provisions and conditions above specified); which quality was adjected, to clear the import of the destination in favour of the husband's heirs and assignees, that the same should not take place, if the wife died without bairns; but the husband's liferent, and the return of the tocher, being consistent, and nothing appearing from the contract that the husband's liferent was to cease in any case, the contract is to be so interpreted, that all the clauses may have their effects, according to the most usual and reasonable destination.

“ THE LORDS found the husband had right to liferent the tocher.” See PROVISION TO HEIRS and CHILDREN.

*Dalrymple, No 11. p. 14.*

\*\*\* See Harcarse's report of this case, No 14. p. 2954.

## SECT. VI.

Effect of failure of the end in view in granting a deed.

1629. *March 25.* LO. COUPER *against* DR STRANG.

DR STRANG having charged the Lo. Couper to pay a pension of L. 40, given to him yearly during his lifetime, he being their minister at Errol, the words of the pension bearing, ‘ That the Lo. Couper understanding the pains taken, and to be taken by the Doctor, upon his vassals in that parish, and for love and favour, he gives the said pension to the Doctor during his lifetime;’ and the

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No 22.

A pension for *future* services, found due, the services not being the *final*, but only the impulsive cause of the pension.

No 22.

party suspending, that the pension bears, ' to be given to the Doctor, for serv-  
 ' the cure of that kirk ;' and he being now transported to another charge, and  
 that kirk served with another minister, the pension should cease, especially see-  
 ing there is an express clause in the pension, whereby the defender accepts the  
 same in satisfaction of all that he can crave of the Lo. Couper for his service ; the  
 LORDS found not this reason relevant ; but found that the Lord Couper was  
 debtor to the Doctor in the pension so long as he lived, albeit he served not the  
 cure at that kirk, seeing the pension bearing, to be given as said is, for pains to  
 be taken *in futuro*, which now ceased, was now found not to be the final cause,  
 whereby the failzie would make it to cease, but was an impulsive cause only,  
 which, although it held not, yet thereby the pension was not restricted to the  
 time of his service, but was given expressly during his lifetime, and ought not  
 to cease so long as he lived ; and so a pension given to a pensioner for his life-  
 time, for services done and to be done, ceased not by not doing of service  
 thereafter continually.

Act. *Nicolson et Neilson.*

Alt. —.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 426. Durie, p. 441.*1661. December 3. MARJORY JAMIESON *against* RODERICK M'LEOD.

No 23.

MARJORY JAMIESON, relict of unquhile Mr John Alexander advocate, pur-  
 sues Roderick M'Leod, for payment of a bond of pension, of 200 merks year-  
 ly, granted to her husband, bearing, ' for service done and to be done.' The de-  
 fender *alleged* the libel is not relevant, unless it were alleged that Mr John had  
 done service constantly after granting of the pension, which the Lords re-  
 pelled. The defender *alleged* further, That he offered him to prove, that Mr  
 John did desist from his employment as advocate after the pension, and became  
 town clerk of Aberdeen ; and the pension being granted to him who exercised  
 the office of an advocate at that time, must be presumed for his service as ad-  
 vocate.

' THE LORDS repelled this defence, in respect of the bond of pension, bear-  
 ing, ' for services done and to be done,' generally.

*Fol. Dic. v. 1. p. 426. Stair, v. 1. p. 63.*1669. February 18. TRENCH *against* WATSON.

No 24.

A CURATOR having contracted a young woman his minor to a near  
 relation of his own, binding himself to pay a tocher with her, and of the same  
 date, taking a disposition to her whole effects ; this disposition, presumed to be