

S E C T. XV.

Compt and Reckoning.

No 313.

1668. *January 11.*GRANT *against* GRANT.

WILLIAM GRANT of Markinch pursues a tutor compt against John Grant of Ballindalloch, his tutor, in which these points being reported to the Lords, whether the tutor were liable for the value of services of the pupils' tenants, by harrowing, plowing, and shearing, &c. And for which the tutor received no money, but the services in kind.

THE LORDS found the tutor not accountable therefor, because he could not force the tenants to pay any price for the same. And as to that point, the tutor being super-expended, the pupil might be decerned upon the pupil's own process against the tutor, without a distinct process at the tutor's instance.

THE LORDS found he might.

Fol. Dic. v. 2. p. 203. Stair, v. 1. p. 502.

1678. *June 22.*HOME *against* HOME.

No 314.

One litiscontestation may be made both upon the charge and the discharge. If the defender have a total defence exclusive of the whole account, it ought to be proponed at the bar, to exclude the account.

IN an accompt at the instance of Sir Alexander Home against his brother Mr Patrick, it was *alleged* for the defender, That he ought not to give in his articles of discharge till the charge were constituted and instructed, for till then he could not know how far he was liable, that he might give up the articles of discharge to balance the same. *2do*, He had a total defence, viz. That Sir Alexander was denuded, and his right was come by progress in the defender's person.

THE LORDS found, That processes for compts and reckonings were articulate libels, referred to auditors, because the whole articles of charge and discharge could not conveniently be discussed at the bar, yet the same method is to be followed therein, as in other processes, that one litiscontestation may be made both upon the charge and discharge; for the articles of discharge are defences of payment, compensation, and retention, or the like; so that if the defender have a total defence exclusive of the whole account, it ought to be proponed and discussed at the bar, to exclude an account, unless it be emergent after the act of compt and reckoning; and therefore, after the defender hath seen the pursuer's account, he ought *simul et semel* to propone his defences, first against the relevancy of the articles in the charge, and then offer his articles of discharge against the relevancy, whereof the pursuer is to be heard, and litiscontestation to be made on the whole; which the LORDS declared they would follow in this, and all other compts and reckonings.

Fol. Dic. v. 2. p. 203. Stair, v. 2. p. 623.