

faith to prove majority, and that to count from the time of his baptism, for he must be born ere he be baptised.

Act. *Lermonth.*

Alt. *Absent.*

Clerk, *Hay.*

Fol. Dic. v. 2. p. 268. Durie, p. 187.

No 592.

1667. June 4.

THOMSON *against* STEVENSON.

AN extract out of the kirk-session books is not a sufficient probation of age to infer reduction *ex capite minorennitatis*, but the case being *difficilis probationis* after a considerable time, the LORDS found, That *aliqualis probatio* ought to be received with the adminicle aforesaid.

Fol. Dic. v. 2. p. 268. Dirleton.

No 593.

* * This case is No 104. p. 8982. *voce* MINOR.

SECT. VII.

Payment and Extinction.

1624. July 29. NORKAT, Englishman, *against* HUME.

IN an action of registration pursued by Norkat an Englishman against Hume, the LORDS found, That the obligation desired to be registrated ought not to have execution for that quantity of the sum therein mentioned, whereof there was a note written upon the back of the obligation, by the creditor himself, now pursuer, bearing so much of the sum to be paid, and that there rests only the particular sum expressed in the note; in respect of the which note written by the pursuer's self, and coming out of his own hands, the LORDS found, That no execution ought to pass, but for that rest which he had written to be owing; and this note so written was found sufficient to liberate the defender for the remnant of the sum, except the rest foresaid; Albeit it was *replied*, That the note ought not to derogate from the bond, nor prejudice the pursuer, seeing it was delete, and was not subscribed by the pursuer, who might have written the same upon hope of payment; which never being made, he might lawfully delete that note, as he hath done, and ought not to be hurt in his lawful debt by the once writing thereof, except that the defender might prove payment of the same. Which reply was once sustained as relevant; but the defender further *duplicing*, That since the writing of that note the pursuer had received an obligation from him of far greater sums than were contained in this obligation now controverted; which sums he had paid, and had retired the said posterior bond, which he then produced cancelled, it was a great presumption that the sums

No 594.

A notandum, in the creditor's handwriting, on the back of a bond, tho' delete, joined with other circumstances, found good evidence of partial payments.

No 594. which the party had granted paid of that obligation libelled were comprehended in that posterior bond; and so the said posterior bond, with the note of receipt, written upon the first obligation, being respected together, ought to liberate the defender. This duply was admitted to liberate the defender, conform to the note written, as said is, albeit it was delete; but the defender was astricted to prove, that the last bond was once delivered by the defender to the pursuer, and thereafter retired upon payment.

Act. *Belsbes.*Alt. *Hope.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 268. Durie, p. 142.*

No 595.

1628. February 20.

A. against B.

THERE being some witnesses produced at the bar by a man's creditor for proving of a debt, there compeared another creditor of the defender's against whom the witnesses were led, and *alleged* the witnesses should not be received, because he offered to prove that the debt was paid. THE LORDS, in respect of the state of the process, would not admit the allegiance to hinder the examination of the witnesses, unless the proponer of it did verify it *instanter*.

Spottiswood, (PROBATION BY WITNESSES.) p. 245.

No 596.

1629. January 28.

HOUSTON against DONALDSON.

In condicione indebiti, if it be alleged that the party made payment *scienter*, this exception must be proved by writ or oath of party.

Auchinleck, MS. p. 155.

No 597.

1629. February 17.

Low against STRACHAN.

IF a party alleges that he has made payment, by allowance of him that had right to the sum paid, this allowance must be proved by writ or oath of party.

Auchinleck, MS. p. 156.

* * * Spottiswood reports this case :

GEORGE LOW pursued Doctor Strachan for 100 merks. He *alleged*, That it was delivered to him by the pursuer, at the direction, or at least the allowance of the Laird of Thornton the pursuer's master; which allegiance the LORDS found probable only by writ or oath of George Low.

Spottiswood, (PROBATION.) p. 243.