

obligeth him to make the bill forthcoming to him, or his order, and hold count to him for what he should recover by virtue thereof.

No 200.

Duplied for the defender; The suspender is never *in tuto* till the bill be retired to him, seeing the creditor therein might have indorsed it to any third party, who could not be prejudiced by the indorser's separate declaration.

THE LORDS repelled the defence founded on the accepted bill; the pursuer, upon payment, finding caution to warrant the defender against all further payment by virtue of that bill.

Fol. Dic. v. 2. p. 150. Forbes, p. 702.

DIVISION V. *

Payment being made, who understood to have advanced the Money.

1662. *January 25.* EARL OF WINTON *against* RAMSAY.

THE Earl of Winton being debtor to the Lady Semple, his daughter, in a sum of money, she assigns the same to umquhile Sir George Seton, who was one of the tutors testamentar nominated and accepting to this Earl; and Sir George transfers the said debt to Mr James Ramsay of Fawside, who pursues the Earl for payment. It was *alleged* by the Earl, That Sir George being one of his tutors, accepting, and acting, as tutor, having acquired right to a debt due by his pupil, law presumes, that he has acquired the same with the pupil's own means or *intuitu* that he was debtor to his pupil in as much; and consequently, that *ab initio* it was taken for his pupil's behoof; and the excipient offered to pay the sum to the pursuer, he finding caution to refund *pro tanto*, if after compt and reckoning it should be found, that Sir George, being a conjunct tutor, should be found debtor to the excipient. It was *answered*, That though Sir George was tutor, yet he was not intromitter; the Viscount of Kingston being intromitter, against whom the Earl had action of compt and reckoning depending. It was *replied*, That though Sir George did not intromit, but suffered Kingston or any of the rest to intromit; yet by the law, *singuli tenentur in solidum*.

No 201.

Effect of a tutor's acquiring right to a debt due by his pupil.

THE LORDS ordained the pursuer to find caution to refund.

Gilmour, No 22, p. 18.

* * Stair's report of this case is No 2. p. 9977, *voce* PAYMENT.