

PAYMENT.

9981

No 5.

and gave a bond for it blank in the creditor's name, and therefore was not obliged to pay it till his bond was retired. The pursuer having also deponed that the bond was lost, and both parties having agreed upon the date, writer and witnesses of the bond,

THE LORDS decerned the defender to make payment of the same, the pursuer always, before extracting, finding caution to relieve or repay, if he should be distrest by any bond of the same sum, writer, date and witnesses.

Fol. Dic. v. 2. p. 49. Stair, v. 2. p. 434.

* * Dirleton reports this case :

1676. June 21.—A WOMAN having lent 100 merks upon a bond, and the same being lost, the debt or was pursued for payment of the said sum, and did confess that he had truly borrowed the money and granted the bond blank, and he was willing to pay the same, being secured against any pursuit at the instance of any person who might have found the said bond, and filled up his own name therein.

THE LORDS thought the case to be of great difficulty and import as to the preparative, that practice of granting blank bonds having become too frequent; and resolved, in this case, to take all possible trial by the debtor's oath, and likewise, of the date and writers name, and the witnesses in the said bond; and thereafter to ordain the debtor to pay upon surety, that the pursuer should relieve him of any bond that should be found of that date and sum, and written and subscribed by the writer and witnesses that should be found to have been in the said bond.

Clerk, *Gibson.*

Dirleton, No 334. p. 169.

1676. July 8.

SPENCE against SCOT.

No 6.

IN a pursuit for payment of a sum of money, it was *alleged*, That the pursuer's cedent was tutor to the defender, and had not made his account; which defence the LORDS sustained against the assignee; but it was their meaning that the pursuer should not be delayed, and that a competent time should be given to the defender to pursue and discuss his tutor.

Reporter, *Glendock.*

Clerk, *Mr John Hay.*

Fol. Dic. v. 2. p. 50. Dirleton, No 376. p. 184.

No 6.

*** Stair reports this case

SPENCE, as assignee by David Scot to a sum of 2000 merks, pursues John Scot, as representing the defunct debtor, who *alleged*, No process, because the cedent was the defender's-tutor, *et præsimitur intus habere ante redditas rationes*. It was *answered*, That the pupillarity was past ten years since, without any process, which was a stronger presumption that nothing was due.

THE LORDS found no process till a competent time, in which the tutor counts might be dispatched and closed with his pupil.

Stair, v. 2. p. 442.

1677. July 26.

The LAIRDS OF RAPLOCH and MONKLAND *against* WILLIAM BAILLIE of Lamington.

No 7.
A debt due by a minor to his tutor or curator, must be understood to be extinguished by intromission; consequently a curator must account for his intromissions before he can claim payment of a debt due by the minor's predecessors.

IN a pursuit against William Baillie of Lamington, for payment of several sums contained in bonds granted by Lamington's goodsir to Raploch, it was *alleged*, No process, because Raploch was one of the defender's curators, and was likewise factor for old Lamington, granter of the bond, and, by virtue thereof, did intromit with the rents of the land, for which he was countable to the defender; likeas, having accepted to be curator, he was liable for all omissions, for which he had never counted to his pupil, and therefore cannot pursue for any debts *ante redditas rationes*. It was *replied*, That the bonds granted, by Lamington's goodsir being for liquid sums, long before any curator, cannot be taken away upon pretence of omission, for which he was never called to any account, and neither intromission nor omission being cleared, it can be no ground of compensation, wherein this allegiance resolved; but these true and liquid debts ought to be paid, reserving action for omission and intromissions; and, farther, Lamington cannot give his oath of calumny upon the verity thereof.—THE LORDS having taken the defender's oath of calumny, who deponed not only that Raploch had intromitted as factor to his goodsir, but likewise, that, during the time he was one of the curators, he had reason to believe there were great omissions; they did believe, that, before any decree, there ought to be a count and reckoning, notwithstanding that the debts were prior to the curatory, upon these reasons, that being undoubtedly one of the curators, he was liable for the whole omissions to his pupil, albeit he was not the only author thereof; and that he having intromitted as factor, whereof he had never gotten a discharge, it was presumable that *intus habuit*, and so Lamington the pupil could not be distressed for his goodsir's debt *ante redditas rationes*.

Fel. Dic. v. 2. p. 50. Gosford, MS. No 1004. p. 678.