

off by the decennial prescription of tutors' accounts. Neither was the force of this removed by the answer made to it by the pursuer, that, if the decennial prescription operates against him, it must equally operate against the defender; for it ought to be observed, that the debts upon which the decret of adjudication was pronounced did not arise from the balance of the tutorial accounts, but was composed of claims founded upon extraneous grounds of debt, and sufficiently authenticated.

No 342.

The Court, in giving their opinions upon this cause, seemed to lay the principal stress of their reasoning upon the proof that was brought of Mungo, father to the minor, being in labouring circumstances, and having died in a condition not to pay his debt, and upon the excessive burdens which were proved to affect the estate during the minority of the pupils, and the administration of the defender's predecessors, which they seemed to be of opinion were sufficient to elide the ordinary presumptions in laws established in such cases.

"The Court repelled the reasons of reduction; but found the defender liable to account for his predecessor's intromissions." See TUTOR and PUPIL.

A. G.

*Fol. Dic. v. 4. p. 130. Fac. Col. No 16. p. 27.*

1765. November 20. SYMON against MACDONALD.

JAMES MACDONALD of Kinton granted an obligation to John Symon, in these words: "I hereby oblige myself to dispoze two ox-gates of the west side of Micrass to your son, when you shall think fit; or to pay him 1800 merks, as to me shall seem proper."

No 343.

The son was minor at the time; and, before his majority, the father gave a discharge of the obligation, bearing, that the 1800 merks had been paid to himself and his creditors.

In an action brought by the son, "the LORDS, found, that the father's discharge, bearing payment of the said price to himself, and his lawful creditors, is a sufficient document of payment."

Act. Crobie.

Alt. Hay Campbell.

G. F.

*Fol. Dic. v. 4. p. 131. Fac. Col. No 20. p. 236.*

1767. ———. STRAITONS against STRAITON.

No 344.

ROBERT STRAITON died, leaving a son, George, and three daughters. George went to Jamaica as a mariner in 1763. In 1767, the LORDS, on application of one of the sisters, sequestrated the land estate left by the father; and the factor pursued the other sister and her husband, who were in possession of part of

No 344. the estate, for the rent of that part. In defence, it was stated, That George was dead; and, in proof of this fact, were produced two affidavits taken before the Lord Mayor of London, in which a mariner and passenger both swore to his death, and to the facts of his being killed by the fall of a water-cask; and that they saw him buried at Brixthelmstone. THE LORDS paid no regard to this evidence; and the fact was, that George soon after appeared in this country. See APPENDIX. See No 341. p. 11675.

*Fol. Dic. v. 4. p. 134.*

No 345.

A number of cattle being stolen at one time, he in whose custody the hides of part of them were found, not bringing proof how he came by them, found liable for the value of the whole cattle stolen and for damages and expenses.

1752. December 5. DUNCAN STEWART against JOHN MACFARLANE.

DUNCAN STEWART had eight cattle stolen, or carried off from his grounds; and search being made for them, two of the hides of these cattle were found in the custody of John Macfarlane. Stewart brought an action against Macfarlane before the Bailie of Monteith, concluding for payment of the value of the whole eight cattle, and for damages and expenses.

The Bailie allowed the pursuer to prove that the two hides found in the custody of the defender, were two of the hides of the cattle which had been carried off from the pursuer's grounds; and on advising the proof, "found that the pursuer had proved the said hides to be two of the hides of his said cattle; and therefore found the defender liable for the value of the whole eight cattle, and for damages and expenses."

The defender suspended, and (denying always that the pursuer had proved the property of the hides), insisted, That he could not be liable for the value of all the eight cattle, supposing the hides of two of them had been found in his custody; for there was no proof offered of his being accessory to the carrying away of the cattle; the only thing alleged against him was, that two of the hides were found in his custody; and supposing he had reset two, that could make him no further liable than for these he had reset.

Answered for the charger, That it appeared from the proof, that all the eight cattle were carried off at once; and as the suspender has brought no proof of the manner how he came to the possession of these two cows, it must be presumed he was accessory to the theft of the whole, and therefore must be liable for the value of the whole, as every person who is art and part of the crime is liable *in solidum*; and indeed it would be extremely hard upon proprietors, if thieves were only to be liable for the particular goods found in their possession, when the proprietor has clearly proved that he had more goods stolen from him at the same time that those goods so found were stolen.

"THE LORDS found the letters orderly proceeded."

Reporter, Lord Drummore.

For the Charger, H. Home & Bruce.

For the Suspenders, Lockhart.

Clerk, Gibson.

B.

*Fol. Dic. v. 4. p. 132. Fac. Col. No 41. p. 62.*