

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.