

No 6.

simple discharge, which could only be relevant in so far as they by this tutor would be excluded from the co-tutors' bearing a share with this-tutor, *in omis-sis et male administratis*; there being nothing here but this tutor's own proper intromission; now insisted for.

THE LORDS repelled the defence simply.

Fol. Dic. v. I. p. 244. Stair, v. I. p. 575.

* * * Gosford reports the same case :

IN the action at Alexander Seaton of Pitmedden's instance, against George Seaton of Menzies, there being a new allegiance proponed, viz. that they offer-ed them to prove, that the pursuer's brother had given a full discharge to one of the creditors, which in law must discharge them all, they being *correi de-bendi*,—THE LORDS repelled the allegiance, unless the discharge did bear, upon payment and satisfaction of the whole goods intromitted with by the whole creditors; for they found that curators, tutors, and magistrates, who were only bound *ratione officii*, the discharging of one of them will not free the rest, ex-cept it be upon payment.

Gosford, MS. No 71. p. 25.

1688. July 31. THE DUKE OF QUEENSBERRY *against* WILSON of Spango.

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THE LORDS decided the cause betwixt the Duke of Queensberry and Wilson of Spango, a papist, who was pursued by the Duke to count for some years' rents, wherein he was his chamberlain. The defence was, I was only employ-ed as a factor under Mr George Blair, who was the principal chamberlain; and you have discharged Mr George, which must accresce to liberate me. *Ans-wered*, Any discharge given Mr George was without a previous counting, and only given as a personal compliment, when the Duke returned first home from France; and therefore can never exoner the sub-factors who never have count-ed, either to Mr George or him: THE LORDS ordained him to count.

1693. February 8.—THE LORDS found the instructions produced by Spango, of 1600 merks, as an article of his discharge in the account; not fully proba-tive, that the money came to the Duke's use; and the question being stated, whether the Duke's oath or Spango's should be taken thereon, it carried Span-go's: But being taken *ex officio*, they would not hold it as a full probation, but ordained him, also on a diligence, to recover Francis Kinloch's books, if any thing of this was stated there.

Fol. Dic. v. I. p. 244. Fountainball, v. I. p. 516. & 555.