

No. 307.

bearing to be the pupil's money.

After many years, the pupil having sought it, it was presumed he had settled accounts with his tutor.

yell and James Arnot debtors, in the name of ——— his pupil, to whom this cedent was tutor, and bearing to be the said pupil's proper monies; and the said debtors being by the bond obliged to pay it again to the tutor's self, his heirs, executors, or assignees, &c.; whereupon the assignee having charged James Arnot to pay, and he suspending upon this reason, that (the monies belonging to the pupil) the tutor, albeit the bond bore that the monies should be repaid to him, could not make any profitable assignation thereof; and that the said pupil being now past the age of minority many years since, it being 34 years, or thereby, since that bond was made, and he hath never sought it, that must be a great presumption for the payment thereof; and if he shall seek it, the suspender shall give him either satisfaction, or then shall be content that sentence pass against him; but he being only bound for James Dalzell, and after so long time, all process ought to cease at this assignee's instance made by the tutor, who could never have made any such effectual assignation of his pupil's monies. THE LORDS found this reason noways competent for the suspender to allege, he being debtor, and never alleging payment made to the pupil, and the pupil's self not opposing to this charge, for it might be that the tutor in his tutor-compts had charged himself with this article of debt to the pupil, and had taken order with him therefor; for which cause, and in respect that the assignee charger offered caution to relieve him at the pupil's hands, which the LORDS sustained and ordained to be received, the letters were found orderly proceed at the assignee's instance. See TUTOR and PUPIL.

Act. ———.

Alt. Johnston.

Fol. Dic. v. 2. p. 163. Durie, p. 805.

1664. December 2.

VEITCH against PATERSON.

No 308.

AFTER the issue of a tack and full payment of the tack-duty, the tacksman having insisted against the setter for the penalty of L. 100 contained in the tack, incurred through failzie of entering the pursuer into possession at a certain term; the LORDS restricted the libel to damages, and found the same not now probable otherwise than by the defender's oath.

Fol. Dic. v. 2. p. 163. Stair.

* * * This case is No 40. p. 11383.

No 309.

A tenant who was bound to leave the houses in repair, removed, and a new

1676. November 15.

ADAMSON against MARSHALL.

JANET ADAMSON charges John Marshall upon a tack, by way of contract, by which "he is obliged to repair the houses in their walls, and to make them wind-tight and water-tight, and to leave them so at his removal. The tenant suspends on this reason, That after the ish of his tack he removed and a new