

1677. December 15. NICOLSON *against* NICOLSONS.

A MAN made a settlement of his affairs, obliging his eldest son, failing heirs of his body, to surrender the estate to other persons named, and about a year thereafter, discovering upon that son's death a defect in his settlement, that he had not brought his other sons, succeeding to the estate, under the said obligation, and to supply the defect, added a holograph postscript to the deed of settlement. THE LORDS found the holograph postscript probative of its date, being supported by the deed of settlement to which it was adjoined, and so suitable thereto, that there could be no reasonable suspicion that it was antedated to avoid the objection of death-bed.

*Fol. Dic. v. 2. p. 259. Stair.*

\*\*\* This case is No 61. p. 8944. *voce* MINOR.

No 502.

1684. January. ANDREW BRUCE *against* ALEXANDER BUCHAN.

AN assignee to a debt pursuing, the defender proponed compensation thus; that the cedent being tutor to the defender, intromitted with his rents before the assignation, which was offered to be proved *scripto*, by the cedent's discharges to the defender's tenants; and he hath not yet counted with the defender for these his intromissions.

*Alleged* for the pursuer; That the discharges produced are null, as wanting writer's name and witnesses, and not being holograph.

*Answered* for the defender; That discharges to tenants for their rents are sustained *per consuetudinem patriæ*, without the ordinary solemnity of other writs.

*Replied*; That such discharges to tenants are only sustained against their masters, and not against third parties.

THE LORDS would not sustain the said discharges against the assignee, unless, in fortification thereof, the defender could prove the delivery of the rent to the cedent before intimation. Here the tutor was not discharged; and it was not debated, if "ought and should intromit" in the tutor could be obruded against the assignee; which seems not unreasonable; and being competent against the cedent's tutor before assignation, the minor could not be prejudged of that benefit by the tutor's assigning.

*Fol. Dic. v. 2. p. 259. Harcarse. (COMPENSATION.) No 259. p. 61.*

1686. March 25. AITON of Inchderny *against* ALEXANDER NAPIER.

THIS was a reduction of a holograph testament made by one Stewart, when he was 15 years old, because *non probat datam*, and so must be presumed to have been signed by him in his pupillarity, when he had not by law *testamenti*.

No 503.

Discharges granted by a tutor to his pupil's tenants, holograph without witnesses, not sustained to instruct an article of compensation against the tutor's assignee.

No 504.

Whether a holograph testament *probat datam*?