

was in his person before his entry to the office ; and not only so, but he was denuded of it by assignation before he became tutor. REPLIED,—It still remained *in ejus bonis*, the assignation not being intimated.

The Lords balancing the decision in this case, *Cranston and Ramsay* against *the Earl of Winton*, *January 24*, 1662, and others ; they found they mainly struck against debts bought in during the tutory ; but, if the pupil's father was debtor to one of the tutors, no law hindered him to pursue his pupil, being authorised by other tutors to pay the same ; and the minor's hypothec *in bonis tutoris* does not reach that case ;—Therefore they repelled the defence and sustained proofs at the assignee's instance.

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1696. *January 24.* EDWARD BROWN *against* ARCHIBALD KER.

PRESDO reported Edward Brown against Archibald Ker, brewer in the Potterrow. The debate was upon a blank bond which Ker had delivered to the deceased Mr Alexander Stevenson, servant to the Master of Stairs, when he was King's Advocate ; and, Mr Alexander being debtor to Brown in 1000 merks, he gave him also this bond instead of a cautioner, wherein Brown filled up his own name. Ker raised a declarator that the bond was granted for a gratuity to the King's Advocate, to get him an ease of his excise, which he never got ; and so, being *causa data non secuta*, the bond ought to be declared null ; and craved Mr Stevenson's oath anent the cause of it : which the Lords, *ex officio*, granted, he being then on death-bed ; who deponed that the Master of Stairs refused to accept of the gift, but desired him to speak to Sir James Oswald and the other tacksmen ; and that Ker bade him keep the bond to himself ; and accordingly he gave it Brown to fill up his own name in it. The Lords falling to advise this oath, it was ALLEGED for Ker, he had interpellated Brown by his declarator, and getting Mr Stevenson examined, before any intimation made of his name being filled up in the blank.

The Lords found, That in a competition among arresters, and other creditors of the party to whom the blank bond is delivered, intimation of the filling up of the name is necessary ; as was found in the case of *Geddes and Veitch*, mentioned by Stair, *11th November*, 1665 ; as also *19th December* 1676, and *17th January* 1677, *L. Banff* against *Grant* : Yet here, the competition being only betwixt the debtor, granter of the said blank bond, and the party whose name is now filled up in it, the objecting the want of intimation was not competent to the debtor himself, especially seeing the bond was offered upon so dishonest an account.

The Lords afterwards, on a bill, allowed Brown, whose name was filled up in the blank bond, to be examined, if he knew what was the cause of granting it, or was conscious that he had reclaimed against it, as not Mr Alexander Stevenson's money.

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