

REPLIED,—Latent insufficiency of goods is always probable by witnesses ; and the suspender will yet get declarations of their insufficiency from abroad.

The Lords found, Seeing he had neglected the order prescribed by the Act of Parliament, his reason founded on the brackishness and utter uselessness of the herring was now only probable by the charger's oath. *Vol. II. Page 35.*

1699. *January 17.* WILLIAM WALWOOD *against* ROBERT WALWOOD.

WILLIAM Walwood against Robert Walwood, his uncle and tutor, who being charged with sundry debts he had suffered to perish, he founded on a discharge he had got from his pupil some time after his majority, bearing, That he was convinced of his integrity, and therefore exonerated him of all omissions, he making faithful account of all his intromissions, and delivering up to him all the inventories and count-books. William repeated a reduction he had raised of that discharge, That it was taken from him by surprise three or four days after he was major, *et ante redditas rationes*, and when he knew nothing of his affairs ; and bore a quality of fair counting and delivering up the books : none of which he had done.

ANSWERED,—Omissions were odious, and might be discharged the next day after the expiring of his minority ; and the provision in the discharge of counting was neither conceived *irritanter* nor conditionally, and so could not annul the discharge ; and the truth is, he was ever willing to count.

The Lords sustained the discharge to exoner from omissions, and assoilyied from the reduction.

Then he craved allowance of £1500 of expenses wared out in selling the wines and other goods his brother left behind him. ANSWERED,—By the Act of Parliament 1672, a tutor neglecting to make inventory can claim no expenses. REPLIED,—His brother having left an inventory, he thought it needless.

2do. His discharge cutting off omissions, must also reach this of his neglecting to make an inventory. REPLIED, *1mo.* His brother's inventory was not full, neither what the law requires in this case. *2do.* The discharge only means omissions in seeking in debts and other deeds of administration, but can never be extended to the necessary requisite, previous to his entry of making inventories.

The Lords, by a narrow plurality, found it comprehended the omission in making of legal inventories, as well as other omissions. Some thought the discharge ought not to cover him, where the omissions were gross and considerable ; for as *lata culpa æquiparatur dolo*, so none are presumed, under general words, to have discharged dole. *Vol. II. Page 35.*

1698 and 1699. The MERCHANTS of EDINBURGH *against* The VINTNERS.

1698. *June 28.*—Phesdo reported the advocation raised by Mr Charles Dal-
K k k