

No. 87. of Hume, and which payment was made to the father, the son who was Provost being minor all the years of the payment, to be relevant to defend the tenants, and that the said payment was made *bona fide*, and so sufficient to liberate the tenants; albeit it was answered for the pursuer, that the said payment could not be found good, which was made by them to the father, seeing the father could not be found lawful administrator to a bastard son, as *in filiis legitimis*, especially seeing the son being a Church-man, viz. a Provost, of whose benefice the father is not presumed to be lawful administrator: Likeas, the pursuer, to exclude *bonam fidem*, and to put the defenders *in mala fide*, offered to prove, that the Provost had obtained letters conform, upon this provision to the Provostry, before any payment made to the Earl of Hume, which Provost also had chosen an administrator and Economus to him in his benefice, and which Economus was in use to set tacks to divers persons, of the said benefice, and to receive the Provost's duties, and to give acquittances thereupon; likeas, the same tenants were convened at the Provost's instance and this Economus *per expresum* in an action of improbation, which was a sufficient intimation that he was the person to whom the only payment should have been made, and to none other; which reply was repelled, and the exception and payment made to the father sustained, and found done *bona fide*, seeing the father was found to be lawful administrator to his bastard son was in these things which are given to him by the father, as was this Provostry, whereto he was presented, and provided by the father; and also, in respect that the defenders offered to prove, that the duties paid by them to the father, were converted and applied by the father to the entertainment and maintenance of the Provost at schools and virtue, partly within, partly without the country, which was found, being applied to that use, to be as sufficient, as if the payment had been made to the Provost's self or to his Economus. Quia extraneus potest dare curatorem rebus a defuncto minori relictis.

Act. Stuart & Craig.

Alt. Hope.

Clerk, Gibson.

Durie, p. 120.

No. 88.

1624. June 26. DRUMMOND against LD. CUNINGHAMHEAD.

Found, That where a renunciation to enter heir is subscribed by a minor, with consent of his curators, the curators are not understood bound as cautioners for him, or otherwise obliged for him to warrant that deed, and that they are no further bound than to consent.

Fol. Dic. v. 2. p. 488.

\* \* This case is No. 1. p. 3465. voce DIES INCEPTUS.