

faith to prove majority, and that to count from the time of his baptism, for he must be born ere he be baptised.

Act. *Lermonth.*

Alt. *Absent.*

Clerk, *Hay.*

Fol. Dic. v. 2. p. 268. Durie, p. 187.

No 592.

1667. June 4.

THOMSON *against* STEVENSON.

AN extract out of the kirk-session books is not a sufficient probation of age to infer reduction *ex capite minorennitatis*, but the case being *difficilis probationis* after a considerable time, the LORDS found, That *aliqualis probatio* ought to be received with the adminicle aforesaid.

Fol. Dic. v. 2. p. 268. Dirleton.

No 593.

* * This case is No 104. p. 8982. *voce* MINOR.

SECT. VII.

Payment and Extinction.

1624. July 29. NORKAT, Englishman, *against* HUME.

IN an action of registration pursued by Norkat an Englishman against Hume, the LORDS found, That the obligation desired to be registrated ought not to have execution for that quantity of the sum therein mentioned, whereof there was a note written upon the back of the obligation, by the creditor himself, now pursuer, bearing so much of the sum to be paid, and that there rests only the particular sum expressed in the note; in respect of the which note written by the pursuer's self, and coming out of his own hands, the LORDS found, That no execution ought to pass, but for that rest which he had written to be owing; and this note so written was found sufficient to liberate the defender for the remnant of the sum, except the rest foresaid; Albeit it was *replied*, That the note ought not to derogate from the bond, nor prejudice the pursuer, seeing it was delete, and was not subscribed by the pursuer, who might have written the same upon hope of payment; which never being made, he might lawfully delete that note, as he hath done, and ought not to be hurt in his lawful debt by the once writing thereof, except that the defender might prove payment of the same. Which reply was once sustained as relevant; but the defender further *duplicing*, That since the writing of that note the pursuer had received an obligation from him of far greater sums than were contained in this obligation now controverted; which sums he had paid, and had retired the said posterior bond, which he then produced cancelled, it was a great presumption that the sums

No 594.

A notandum, in the creditor's handwriting, on the back of a bond, tho' delete, joined with other circumstances, found good evidence of partial payments.