

1673. July 26. Earl of ANNANDALE against CREDITORS of SINCLAIR.

No 285.

IN a competition betwixt an appriser and a donatar of liferent-escheat, it was sustained to be proved by the members and clerks of Exchequer, That the appriser presented a signature before the liferent-escheat took place by lapse of year and day.

*Fol. Dic. v. 2. p. 235. Stair. Dirleten.*

\*\*\* This case is No 67. p. 3666. *voce* ESCHEAT.

1680. June 24. CLELAND against The Laird of LAMINGTON.

No 286.

WILLIAM CLELAND, as assignee by Littlegill, having pursued Lamington for payment of a bond of his deceased father; the LORDS found, That Littlegill having been tutor or curator to Lamington, neither he nor his assignee could have access against him *ante redditas rationes*, and therefore appointed a count and reckoning; in which Lamington charged several bonds due to his grandfather which were neglected by his curators and the parties become insolvent, and for which his curators were liable *in solidum*. It was answered, *Non relevat*, unless it were instructed that his curators knew of these bonds. It was replied, That it is presumed the bonds were in the charter-chest, which the curators were obliged to search, and their ignorance cannot excuse them unless they had searched the same.

What proof that a curator upon search could not find a bond in question?

Which the LORDS sustained, but found the search probable by witnesses, and that they did search, but did not find the bonds in question, or inventories relating where they were, unless it were proved they knew of these bonds particularly.

*Fol. Dic. v. 2. p. 235. Stair, v. 2. p. 777.*

\*\*\* Fountainhall reports this case:

IN the action James Cleland against Lamington, which resolved into a curator account, Newton having reported two points debated there, they found, contrary to Newton's own opinion, " That the minor is not obliged to prove that the writs were in the charter-chest the time of the curatory, but that the same is to be presumed, unless the curator offered to prove that the charter-chest was searched, and these bonds and other instructions not found therein; and allow that to be proved by witnesses who made inventory of the writs, or searched the charter-chest, or were present at the searching of it; and allow James Cleland by a diligence to cite the rest of the curators. And as to the other point about the executry, the LORDS, before answer, ordain Lamington to condescend, if during the time of the curatory he was distressed for any