

No 2.

Nam transactio cum quibusdam facta aliis non debet prodesse. And so albeit the partie had transactit with the said hielandman, it sould not be profitable to the rest, and tak away his action that he had against them; and that specialle, because the partie had intentit no action against the said Ferguson, nor yet was he *correus debendi* into the summons. To this was *answerit*, be reasoning *inter duos*, that it may be practised *inter duos*, quod transactio cum aliqua parte ubi sunt plures rei debendi, extinguit totam actionem ne aliter acto parliamenti provisum fuerit, as was done to the executors of the cardinal, in the spulzie of the cardinal of St Andrews; and to John of Carnegie in the Parliament *anno 1581*, et hoc ubi unusquisque tenetur in solidum, et hoc de jure, *C. L. ult. de duobus reis*, interruptio enim facta per unum correorum aliis prodest, et nocet; for albeit this Ferguson was not summoned, yet he was debtful for the same cause, et ex eadem stirpe obligationis, and so the transactions with him behovit to take effect, the hail effect and cause.—THE LORDS found be interlocutor, that the transaction with Ferguson, albeit he was not summoned, extinguisht the hail action; et hoc una voce dicebant Domini quod rarum est.

Fol. Dic. v. 1. p. 244. Colvil, MS. p. 365.

1609. February 23.

M'NACHT against M'GHIE.

No 3.

The pursuer of a spulzie having discharged one of the defenders for his own part, it was found, that this discharge did not cut off the action against the other defenders.

ANE pure man callit M'Nacht, persewit M'Ghie, and certaine uthers, for spulzie of his goods. They exceptit peremptorie that they sould be assoilziet, becaus the persewar had transacted with ane of the committars of the fact be writ, and received satisfaction and dischargit him the spulzie, and sua in effect has past fra the spulzie, and having tane satisfaction from ane could persew nane of the rest. It was *ansrit* be the persewar, that the transaction could only liberate the man that was dischairgit for his own pairt, and na farder; and as the spulzie wald devyde amongst them according as they were proven to be committars *pro ratis portionibus*, sua wald it be devydit in the transaction. The defendar producit ane practic betwixt Kinfawns and Barclay of Strowie and Lindsay, No 1. p. 3555. be the whilk, in ane spulzie of evidents persewit be Kinfawns against Thaime, they having exceptit that he had transactit with the Lord Ruthven, the Laird of Bathyok, and uthers whom he had persewit; and that in ane general submission betwixt Kinfawns and the said Lord, &c. ilk ane of thaime had dischairgit uthers of all things they could claime of uther, the LORDS fand that exception relevant, and assoilziet. This was done in *anno 1554*, —It was remembrit amongst the LORDS, that, in an action of spulzie persewit be James Douglas in Leith against Wallaces, and the Laird of Bogie, the transaction betwixt the persewar and Bogie relievit the Wallaces. In this cause the LORDS fand, that gif the persewar had transactit generallie, and given an absolute discharge to any of the committars, granting him satisfied of the hail guides

spuilzie, it wald relieve the hail defendars, but gif it wer onlie ane particular discharge of that man's pairt, it sould not liberate the rest of the defendars of thair parts.

No 3.

Fol. Dic. v. I. p. 244. Haddington, MS. No 577.

1610. July 27. LD. ABERZELDIE against LORD FORBES.

HE who has transacted with one of the parties whom he pursued for spuilzie and ejection, and received contentation and good deed for his renunciation, prejudices himself of his action against the rest of the defenders; but if he have discharged him without any satisfaction or good deed, only because he knew him to be innocent, that will not prejudice his action against the rest, who excepted upon a translation betwixt Aberzeldie, or Patrick Mortimer his cedent, with Monimusk, whom they had pursued, and the Lord Forbes, for that spuilzie.

No 4.

Fol. Dic. v. I. p. 244. Haddington, MS. No 1988.

1611. June 20. DOUGLAS against LEITH.

IN an action of spuilzie pursued by Mr Thomas Douglas, minister at Balmirnoch, *contra* David Leith, the LORDS fand an exception relevant, founded upon a discharge given to Alexander Smith, one of the parties, notwithstanding it was provided in the transaction, that it should not prejudice Mr Thomas against the remanent defenders.

No 5.

Fol. Dic. v. I. p. 244. Kerse, MS. fol. 197.

1668. December 19. SEATON against SEATON.

MR ALEXANDER SEATON, as executor to his brother, Pitmedden, pursues Seaton of Menzies, as representing his father, who was one of the pursuer's brother's tutors, for his father's intromission with the pupil's means; who *alleged* absolvitor, because the pupil, after his pupilarity, had granted a discharge to one of the co-tutors, which did extinguish the whole debt of that co-tutor, and consequently of all the rest, they being all *correi debendi*, liable by one individual obligation, which cannot be discharged as to one, and stand as to all the rest; for albeit *pactum de non petendo*, may be granted to one, and not be profitable to the rest, a simple discharge, which dissolveth the obligation of the bond, must be profitable to all.

THE LORDS repelled this defence, unless the discharge had borne payment, or satisfaction given, and *in tantum*, they found it would be relevant, but not a

No 6.
A discharge to one of more co-tutors was found not to liberate the rest, except in so far as satisfaction was given by the party discharged, or in so far as the other co-tutors would be excluded from recourse against the party discharged.