

point the said payment, or that it was made of the pursuer's allowance; for the pursuer replied, That without that were alleged, it could not be sustained; that the Chamberlain might more prejudice his master in a spuilzie, than he might prejudice his master's warning, by receiving of duty after the same, without the master's allowance, which was repelled, and the exception sustained *ut supra*.

A& Stewart.

Alt. —.

Clerk, Gibson.

Fol. Dic. v. I. p. 112. Durie, p. 271.

No 4.

1627. December 13.

HEPBURN against TENANTS of FAIRNIFLAT.

IN a spuilzie of teinds by Hepburn *contra* The Tenants of Fairniflat, the Lords found an exception proponed for the tenants, relevant to liberate them, founded upon payment made by them to their master, viz. Robert Lighton, of the same teinds of the crop libelled, who had right thereto before the pursuer's right; which payment was sustained for the said tenants, albeit the pursuer *replied*, That this payment could not be sustained to liberate them, seeing their master's right could not so much as defend himself, if he would compear and allege, and so cannot defend them; for he would refer, as he presently refers, to his oath *simpliciter*, that his right is antedated, and so could not prefer him to the pursuer; likeas the master being admitted for his interest, in this same process, and proponing this defence to liberate the tenants, the Lords had found the said reply, upon the antedating of his right, relevant, which being so once found against himself, his passing from his interest, and now proponing it for the tenants, cannot make it more relevant for them, to elide the judgment, where the master had once compeared, and now will pass from his interest, and propone it only in the name of the tenants; and that they must be found in *bona fide* to pay their own master, who was heritor of the lands, for the teinds whereof this spuilzie was pursued, and who had paid to him a certain duty promiscuously for stock and teind together: Likeas the pursuer *replied*, They could not be found in *bona fide* to have paid, seeing, before their payment, the pursuer had served inhibition upon the same teinds; which inhibition was intimated to them particularly; after which they must be reputed to have paid *mala fide*, even as if they had paid after arrestment; and so he *replied*, That they paid after inhibition executed particularly against themselves; and to one who had not a right, but antedated, and which was already found in the process against their master; so the exception should be repelled; notwithstanding whereof the exception was sustained, and the payment made after the inhibition found to be *bona fide*, being made to their master, who was heritor of the ground, albeit they never alleged that he was their master of any preceding year, or that they had paid him the duty of any other year before the year libelled, either for stock or teinds; but only that they had paid to him a certain duty for land and teind the year libelled, promiscuously, as they had done divers years before to Graham of Fairniflat, their master, from whom this defender had acquired the right to the

No 5.

A spuilzie of teinds was elided by this exception, proponed by tenants, that they had paid to their own master, who was heritor of the ground. This was found *bona fide* payment, notwithstanding of an inhibition of those teinds served and intimated to them.

No 5. lands and teinds; likeas this same Graham was also author of the pursuer's right to the same teinds, and so was common author to them both.

Act. *Stuart & Gibson.*

Alt. *Hope & Mowat.*

Clerk, *Gibson.*

Fol. Dic. v. I. p. 112. Durie, p. 320.

No 6.

Found that tenants might pay to their master, who had, for a certain rent, let the land, with the teinds, to them; even after citation, at the instance of the titular; for they could not know what part of the rent to retain for teind.

1628. *March 21.* MURRAY *against* INTROMITTERS with Teinds.

IN an action by Mr Patrick Murray, as Abbot of Inch Jaffray, against the Intromitters with the teind-sheaves of the lands within that Abbacy, for payment of the old accustomed duty used to be paid for their teinds; the LORDS found an exception relevant, bearing payment to be made by them to their master, who set the land with the teind to them, for a certain duty, for stock and teind undistinguished, according as they were in use to pay to him diverse other years before the years libelled; which payment, albeit the same was made by them after they were cited in this cause, and whereby the pursuer alleged, that they were in *mala fide* to do any deed in his prejudice thereafter, the LORDS nevertheless sustained it, seeing they could not know what part of their duty they should keep unpaid from their master for the teind, different from the stock, for both which they were astricted in a duty undistinguished. Also the LORDS found, That a prelate having right to teind-sheaves, if he live while the whole corns be shorn, albeit he die both before the leading of them off the ground, and also before the term of Martinmas thereafter, yet that the whole teind-sheaves will pertain to him and his executors, and that the same will not divide, as in farms and other duties, where the person having right to the same, dying before Martinmas, will only leave right to his executors to the half of that year's duties, which the LORDS find not to hold alike in teind-sheaves, where the party having right, may in law intromit with, and lead the teind-sheaves immediately after the corns are shorn, even that same day wherein they are shorn, for his right thereof will carry him to the same; so not the terms of Whitsunday or Martinmas, nor the time of leading off the ground, but the time when the person having right, hath in law right to lead, is here considered. *See TERM, LEGAL and CONVENTIONAL. See TEINDS.*

Act. *Hope & Nicolson.*

Alt. *Aiton & Stuart.*

Clerk, *Hay.*

Fol. Dic. v. I. p. 112. Durie, p. 366.

1628. *March 27.* LO. BLANTYRE *against* PARISHIONERS of BOTHWELL.

No 7.
After an inhibition of teinds, the tenants continuing to pay to the person in possession,

IN the spuilzie pursued by the Lord Blantyre, mentioned 25th March 1628,* the Lords found a disposition made by him, who was author to the Lord Blantyre in his right of the teinds libelled, and granted for onerous causes to his creditor, before the right made to the pursuer; which disposition bears: 'That

* *Durie, p. 369. voce IMPLIED DISCHARGE and RENUNCIATION.*