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that term, conform to his requisition, he should have left the possession of the roun; and albeit that the party offered to make satisfaction for the grass eaten by his goods, since the term of Whitsunday, yet that was not respected, but repelled by the LORDS; for they found, that by the said pasturing, and retaining of that manner of possession, he had *tacite* past from his requisition.

Act. Nicolson.

Alt. ———.

Clerk, Gibson.

*Fol. Dic. v. I. p. 433. Durie, p. 176.*1628. *March 18. LO. BLANTYRE against PARISHIONERS OF BOTHWELL.*

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Taking payment of the old teind-duty, though for one year only, was found a passing from a preceding inhibition, so that the tenants were liable only for the old duty, till a new inhibition was served; but payment of a pension due to the pursuer out of the teinds, was found not to import a passing from the inhibition.

IN the spuizie of the Lord Blantyre's, mentioned No 15. p. 217, the LORDS found, that an inhibition used against the defenders, for their teind-sheaves of one year, was a sufficient ground to exclude the persons inhibited that year from any defence, which they might propone, that they could not be pursued for any greater duty than the rental-bolls, or the duty accustomed to be paid for these teinds in the preceding years, for any year subsequent to that year, for which inhibition was served; which old use of payment, the LORDS found was interrupted for all the years subsequent, after that year of the inhibition, whereof the pursuer had not received payment, nor prejudged the said inhibition by receiving the old duty thereafter, albeit there was no inhibition served each year thereafter upon the saids teind-sheaves, notwithstanding whereof the pursuer might pursue for such quantities, as he should prove the teinds to have extended unto the years libelled, wherein no inhibition was served, the old use of payment being interrupted as said is, by the inhibition served for one preceding year.

1628. *March 25.*—IN a spuizie pursued by Lord Blantyre, mentioned 15th and 18th March 1638, the LORDS found the receipt of the old accustomed duty, used to be paid for teind-sheaves received for one year subsequent to a preceding year, for the which inhibition was served at the instance of the pursuer, prejudged the pursuer, that he could not seek any greater duty for the said teinds, neither that year whereof he received the old duty after the inhibition, nor for any other year thereafter, for the which he had not served inhibition; for the said inhibition was found to be prejudged, and in effect was past from by the pursuer, by his foresaid receipt of the said old duty thereafter, whereby it could not be counted an interruption, and therefore that the defenders should pay no more for the teind-sheaves, but the said old duty, for any years for the which they were not interrupted after the receipt, since the inhibition, as said

is. *Item*, THE LORDS found, that the payment made to the pursuer, who had a pension of certain bolls to be paid out of the teind-sheaves libelled, did not import liberation to the defenders, who made the said payment, of the action for the rest of the avail of the said teind-sheaves, and their wrongous intromission was not totally purged thereby; but allowed only the said payment *pro tanto* in the first end of the quantity of the said teind-sheaves, seeing the pensioner had not the teind-sheaves assigned to him for payment of his pension, but the pension was only of certain bolls to be paid out of the teind-sheaves.

Fol. Dic. v. i. p. 433. Durie, p. 363. & 369.

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1633. February 20. LENOX against M'MORAN.

ONE LENOX pursuing M'Moran, who was minor, for reduction of a feu infestment, granted to the defender's father, upon the act 1597, cap. 250, for not paying of the feu-duties many years bypast; and the defender *alleging*, That he was minor, *et sic de jure non tenebatur placitare super hereditate paterna*, this exception was repelled, in respect he was convened for his father's fault, and also the minor's self was holden to answer, in respect of the act of Parliament, from which minors are not excepted. And it being further *alleged*, That in the feu-infestment, called to be reduced, it was specially provided, and set down therein, 'That if the party failed to pay the feu-duty at the term appointed, then it should be leisome to the giver of the feu, and his heirs, to poind the land for the double of the feu-duty;' by the which conventional condition agreed upon betwixt the parties, which they had convened upon as an express penalty, set down to supply the failzie of not payment of the feu-duty, the said pursuer could never have recourse to claim any other thing, which might ensue upon that failzie, neither by the act of Parliament, nor by any other ground, but only that which was agreed to come in place of the failzie, as said is, and therefore could never be heard to reduce this right; this allegation was repelled also, for the LORDS found, that that condition convened betwixt the parties did not derogate, but that the pursuer might seek the benefit of the act of Parliament, from the which he was not secluded by that clause of the infestment, seeing the party might seek any of them as he pleased, specially also the act of Parliament being since the infestment. *See MINOR NON TENETUR, &c.*

Fol. Dic. v. i. p. 433. Durie, p. 675.

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A feu charter empowered the superior to poind for double the feu-duty, upon failure of payment. Found that this did not prevent him from reducing the feu in terms of the act 1597, cap. 250.