

PAYMENT BEFORE HAND.

10023

before the said terms of payment, the donatar had arrested the same *debito tempore*; for, if it should be lawful to allow this payment made before hand, before the terms, the donatar and creditors might ever be prejudged; and, therefore, those who pay before they can by law be compelled, must do the the same *suo periculo*, and not to the hurt of others, and they should provide for their own relief.

No 3.

Act. *Mowat.*

Alt. _____

Clerk, *Hay.*

Durie, p. 352.

1629. June 12.

GRAY against CAMPBELL.

SOME feu mails, for divers years and terms to come, paid and advanced to the heritor or lifereater, or any other having right to the lands, by the tenants, is not allowed to liberate the payer of those terms which were not come the time of making of the payment, if he, to whom the payment was made, shall happen to be denuded of his right, in favours of any other, before the expiring of these terms, the duties of which terms will pertain to him, who then shall have right to the land, notwithstanding of the tenant's payment making to his master before hand, the master then having a right undenuded, but prejudice of the tenant's relief against the master to whom he paid, or for whom he paid to another, there being no real deed done by the tenant to affect the land to him, whereby to retain the duties for his relief.

No 4.

Fol. Dic. v. 2. p. 52. Durie, p. 445.

1662. January 7.

EARL of LAUDERDALE against TENANTS of SWINTON.

EARL of LAUDERDALE, as having right to the forfeiture of the barony of Swinton, pursues the tenants for mails and duties. George Livingston, one of them, *alleges*, That he must be assoilzied from one year's duty, because he offers him to prove, that it is the custom of the barony of Swinton, at least of a distinct quarter thereof, that the tenants do always at their entry pay half a year's rent, and are free of rent at the term they remove, and so do all along pay a year, at the least half a year before the hand; and subjoines, that he has paid accordingly to Swinton himself, for a term's mail, due for the crop which is after the pursuer's right. The pursuer *alleges, Non relevat* against him a singular successor, or against the King his author; because, that party that hath right to the land, hath right to the fruits, and so to the rents which are payable for the fruits which were extent upon the land, or growing after that party's right, and no payment before the hand can liberate the possessor.

No 5.

Payment of rent made at entry, such being the custom of the barony, found relevant against a donatar of forfeiture.