

more to crave, having made no mention thereof, when he made the writ; but where payment was made without writ, the payer has followed the faith of his party; so that, if he shall say that he received that payment, without prejudice of the preceding years, as he now does, the debtor remains debtor therein, notwithstanding of the subsequent payment of the other years, and of the payment made to Eastnisbet of the year acclaimed.

No 58.

Fol. Dic. v. 2. p. 136. Durie, p. 572.

1631. March 23. L. ROSYTH against WOOD.

THE La. Rosyth, and Andrew Wood her spouse, having charged for payment of a victual duty, addebted to them by the Laird, conform to a tack of her conjunct fee lands set to him, and that for the crop 1626, for the which they had recovered decreet against him; and he suspending, that since that sentence he had completely paid the crop 1627 and the year 1628, conform to their acquittances given thereupon; and also had paid the year 1629, except only 3 bolls, which he had offered upon acquittance, and was refused, and he is content presently to pay the same, and this must import to him liberation of the year 1626 controverted, and all years preceding, being *apochæ trium annorum*; the LORDS found this reason noways relevant to liberate the suspender of the years libelled, because there was no acquittance of the year 1629; but only there were produced certain particular tickets, or some partial receipts of some quantity of that year's duty, received at divers times, and which, being in sundry tickets, and received to account of that year's duty, and being all calculated together, made not up complete payment, but there was resting a little part of the whole duty, viz. 3 bolls; and, in respect thereof, they found that the suspender was not liberated thereby of the year libelled; whereas, if complete payment had been made of all, and had been instructed by acquittances, he would have been liberated that year, notwithstanding of the decreet that year in special therefor; for the decreet made it only appear to be a debt, which, without that sentence, would have appeared also by the tack, if there had been nothing to have taken away the same.

No 59.
Two years discharges, with partial receipts for the third, which, put together, wanted a little of the year, not found sufficient to infer presumption of payment of bygones, though the balance was offered at the Bar.

Act. Nairn.

Alt. ———

Clerk, Gibson.

Fol. Dic. v. 2. p. 136. Durie, p. 585.

1634. March 18. DOUGLAS against BOTHWEL.

THE deceast Lord Whittinghame, having a pension of L. 100, to be paid out of the blench-duties of the erection of Holyroodhouse, umquhile Mr Francis Bothwel being tutor to John now Lord Holyroodhouse, gives a bond to the said

No 60.
Three successive discharges found to support the presumption

No 60.
of payment
of bygones,
although a
bond had been
granted by
the tutor of
the debtor,
for part of
the arrears.

Lord Whittinghame, for payment of that duty of the crop 1624, at Martinmas the said year, and dies before the term of payment; which obligation Whittinghame assigns to Douglas, his servant, who pursues the heirs and executors of umquhile Mr Francis for payment; who alleging that the Lord Whittinghame, after this bond, was in use, divers years thereafter, to receive payment from the said John now Lord Holyroodhouse of the said pension, likeas he had granted payment by three several discharges of three years payment thereof, for three years together, and which of law must presume payment of all preceding terms, and consequently must liberate from this bond: The LORDS found the exception relevant to liberate the excipient from this bond, albeit the pursuer replied, that this presumption ought not to liberate from that year whereof the party creditor had provided himself of a sufficient security by the bond, in which case the presumption ceases, and the payment made thereafter by another party, than by him who was obliged by this bond, cannot liberate him who was obliged by the bond, being a distinct party; which reply was not respected, by reason that the bond was granted by the tutor to him, who thereafter had made the payment excepted on, and also that it was so long lain over, never craved till now.

Act. Craig.

Alt. ———

Clerk, Gibson.

Fol. Dic. v. 2. p. 136. Durie, p. 713.

No 61.

The production by tenants of a merchant's receipts for three consecutive years rents, delivered by order of their landlord, found not to import a discharge of a decree for the rents of preceding years.

1636. *March* 26. MASTER OF CORSTORPHINE *against* TENANTS.

THE Master of Corstorphine having married the relict of Mr Alexander Keith, to whom she was executrix, and thereby pursuing for certain rests of the farms of the lands of addebted by the tenants, possessors thereof, of the crops 1623, 1624, and 1625, for the which rests the said umquhile Mr Alexander had obtained sentence in his own Baron-court against them, upon their own confession, containing the special quantities of the same, and whereto his said spouse had right as executrix to him; and the tenants representing the danger of this pursuit, if the same should have way, that poor tenants, who take not acquittances when they pay their Masters farms and duties to them, may be in, the same neither being sought by their Master in his own lifetime, he living ten years after that pursuit and sentence, and never challenging them for payment, they nevertheless being many years still his tenants, and possessors of the same lands, likeas they offered them to prove that, by the space of three years together immediately subsequent to these years for which they are now pursued, they made payment of the three last years next following of the said farms to the merchants to whom their said umquhile Master sold the farms of the lands, which is alike as if they had paid himself, this being done at his