

nuded of the year 1657, nor intimation made. It was *answered*, That such a liberation is but presumptive *præsumptione juris*, and admits contrary probation, and is sufficiently taken away by the oath of the party, acknowledging that year unpaid, and the warrant given to John Stewart to lift it for his own use, before these discharges.

No 64.

THE LORDS repelled also this defence upon the three dischargees, in respect of the reply.

*Fol. Dic. v. 2. p. 136. Stair, v. 1. p. 606.*

1682. February: Earl of MARSHALL against FRASER of Strichen.

No 65.

IN an action at the instance of the Earl Marshall against Thomas Fraser of Strichen for certain bygone mails and duties, the LORDS found, That three subsequent discharges granted by the Earl's chamberlain did not liberate the tenants from preceding years, but only from the years mentioned in the discharges, the Earl being sequestrate for the time, and not *valens agere*.

*Fol. Dic. v. 2. p. 137. Sir P. Home, MS. v. 1. No 145.*

1699. December 8.

ALEXANDER GRAY against WILLIAM REID, Tenant in Wariston.

No 66.

WILLIAM REID and his father having possessed the lands of Wariston by a 19 years tack from the year 1680, Alexander Gray, as having right to the tack-duty, pursues for payment.

The defender *alleged*, That he could not be liable for rents preceding the 1687, inclusive; because he produced three consecutive discharges, one for the 1684; another for the 1685, granted by Alexander Cruikshanks, the pursuer's author, and a third for the 1686 and 1687, granted by David Cruikshanks and his tutor, who was the son and representative of the said Alexander and the pursuer's cedent.

Three consecutive discharges, two by the father, and one by the son, not equivalent to a discharge of all precedings, unless the son knew of the father's discharges.

It was *answered*; Three consecutive discharges granted by the same person, without reservation of bygones, do infer a presumption that all precedings were paid; and that presumption hath been sustained, though the consecutive discharges were not all granted to the said person, but two to the father, and one to the son; but they were never sustained when granted by different persons; nor is there reason for it; because the granter of three consecutive discharges knew of the two former when he granted the last; whereas, a son granting a discharge of a particular year, knows that the granting of a single discharge does not prejudice him as to bygones, and may be ignorant what his father had discharged.

No 66.

It was *replied*; The heir is *eadem persona cum defuncto*, and therefore the discharges must be conjoined. *2do*, It appears, by the son's discharge, that he perfectly knew of his father's; because the discharge enumerates several particular payments made to his father, and some to himself or his tutor, making up two years rent discharged; so that, having seen these particular receipts, he must also be presumed to have seen these two former discharges.

It was *duplied*; The heir is *eadem persona* as to the representation; but this presumption, arising from the granting of three discharges, that the granter knew precedings paid, depends upon the particular knowledge of the granter; and the son may be ignorant of what was known to the father. *2do*, The son's discharge enumerating the father's receipts, proves that the son knew of the receipts enumerated; but proves not his knowledge of the two former discharges; which, if it were instructed, would certainly be relevant.

“THE LORDS did not incline to conjoin the son's discharges with the father's, to infer the presumption that precedings were paid, unless the son's knowledge of the father's discharges were qualified; and, before answer, ordained the son and his late tutor to be examined, if they saw or knew of the said former discharges.”

*Fol. Dic. v. 2. p. 136. Dalrymple, No 21. p. 26.*

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1728. July 18. Marquis of ANNANDALE *against* JOHNSTON of Elshieshiels.

No 67.

FOUND, That the *apocha trium annorum* inferred a sufficient discharge of all by-gones, even where some of these by-gones were constituted by writ. *N. B.* The writ here was not a bond for a liquid sum of money, but a note only, whereby the debtor became bound ‘to make just count, reckoning, and payment of his bygone feu and teind-duties, and of what he was resting thereof since his last discharge;’ though it was *pleaded*, that this made no difference; because, if ever these by-gones had been counted upon, the said note would have been given up to the debtor. See APPENDIX.

*Fol. Dic. v. 2. p. 136.*

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1729. February 5. Sir ALEXANDER REID *against* OGILVIE.

No 68.

A DEBTOR in a bond bearing annualrent, counting with his creditor, *alleged*, That, several years before, he had paid the annualrent of one year twice over, which he offered to instruct by one general discharge of that year's annualrent, and several partial receipts of the same year. The creditor *pleaded* the *apochae trium annorum*. He put the case, That he were now insisting against his debtor