

No 10. 1687. November. BLACCADER against SIR JAMES COCKBURN.

It was debated, if three consecutive discharges granted by a factor, were not sufficient to infer payment of all bygones. But the point was not determined, because the factory was not produced. But it was not controverted but partial discharges, relative to a certain year's rent, and amounting to the full rent, were equivalent to one total discharge for that year.

*Harcarse, (DISCHARGES.) No 423. p. 113.*

1713. June 18. SIR THOMAS BURNET of Leys against The HERITORS of the Shire of KINCARDINE.

No 11.

A party who had served several years for a shire as commissioner to the Parliament, wrote to one of the heritors thus, "I hope I have served the shire faithfully, and burdened them with no expenses, and I do fully discharge you of any expenses upon the account of my representing your shire." The Lords found the letter imported a full discharge and exoneration to the whole heritors of the shire.

In the suspension at the instance of the Heritors of the Shire of Kincardine, of a charge given to them by Sir Thomas Burnet, to meet and stent themselves for fees due to him as their commissioner to the Parliament, from the year 1686 to the 1703; the suspenders produced a letter from the charger to James Miln of Hatton one the suspenders, bearing these Words, 'I confess I had never any occasion to do you any act of kindness; but I hope I have served the shire faithfully, and burdened them with no expenses, and I do fully discharge you of any expenses upon the account of my representing your shire.'

THE LORDS found the letter imported a full discharge and exoneration to the whole Heritors of the shire, as well as to James Miln, to whom it was directed, of all commissioner-fees preceding the writing of the said letter, and therefore suspended the letters,

Albeit it was *alleged* for the charger, *imo, Illud non agebatur* in that letter to discharge the shire, but to discharge James Miln, to whom only the compliment was intended. This appears from the adjected words, 'of which I discharge you,' which were superfluous, had a discharge to the whole shire been implied in the preceding words, 'that he had not been burdensome to the shire;' *et actus agentium non operantur ultra eorum intentionem.* *2do*, These words, 'I have burdened them with no expenses,' import no more a discharge to the Heritors of the commissioner-fees due by them, than a creditor's writing to his debtor, 'I have not been burdensome to you in calling either for principal sum or annualrents,' can infer a discharge of both,

In respect it was *answered, imo*, If the general consideration of the shire was not then in view, but only James Miln's concern, why did the letter bear, 'that he had served the shire faithfully and burdened them with no expenses?' These words, 'I do fully discharge you,' afford no argument for restricting the effect of the letter to Hatton, but are the particular inference to him the letter was directed to, from the general premises in favours of the whole shire. *2do*, The parallel is not just betwixt a creditor signifying to his debtor that he hath

not been burdensome in calling for his money, and the charger's writing to the suspenders that he hath not burdened them with any expenses; for in the one case the creditor declares wherein he hath not been burdensome, viz. in calling for his money; in the other, the charger declares that he hath not burdened them with the debt itself. But then, again, should a creditor write to his debtor, with whom he is counting, that he has not burdened him with such a sum, and thereupon plead favour in other particulars, such a letter would come little short of a discharge. So that these words, 'I have burdened the shire with no expense,' can imply no less than the upgiving all claim to them; seeing it is not a delay to seek expenses, but a discharge of them, that could make the shire not be burdened.

No 11.

*Fol. Dic. v. 1. p. 244. Forbes, p. 679.*

*See GENERAL DISCHARGE.*

*See APPENDIX.*

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