

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.*

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.*

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