

PAYMENT BEFORE HAND.

1602. *January 14.* JOHN HOME *against* WALTER CAIRNCROSS.

JOHN HOME, master hunter to his Majesty, having obtained the escheat of Walter Cairncross, and general declarator thereupon, pursued certain particular tenants of the said Walter's lands, for payment of the farms of the years 1599 and 1600. It was *excepted* That the pursuer could have no right to the half farms of the year 1599, because the said Walter's escheat could not fall before the committing of the crime, and the crime being committed in August 1599, or thereby, and he only denounced in October thereafter, he had undoubted right to the farms of that year, at the least to the half farms of that year; for albeit farms be not paid while betwixt Yule and Candlemas, yet they are owing, having respect to Whitsunday and Martinmas; and if the heritor decease before Martinmas, the half farms of that year will appertain to his executors, because he lived after Whitsunday, and so the term of Whitsunday being past before committing of the said crime, and before this denunciation, it was lawful to him to receive payment of the half farms, and give his acquittance thereupon, which may exoner the tenants at all hands. To the which it was *replied*, That albeit respect be had to the division of the farms according to the time of the decease of the heritors, when the question is betwixt the defunct's executors and his heirs, yet, in other cases, there is no such respect had to the prejudice either of the master's creditors, or the King's donatar; but the terms of Yule and Candlemas are only respected, before the which there can no lawful payment be made by the tenant to his master, or any other in his name, or at his command, of his farms, and if any thing be done in the contrary, it will not stand, nor be found lawful; otherways it should lie in the master and tenant's hands by collusion, and antedated acquittances, to defraud all creditors of their debts, and lawful arrestments and poindings, and the King's donatar of the escheats and profits of the liferent. In respect of the which reply, the LORDS repelled the exception, and found, that as the tenant

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In a pursuit at the instance of a donatar of escheat against the rebel's tenants, the Lords refused to sustain their exception of payment made to the rebel himself, because it was done before the term.

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could not be compelled to make payment of his farms before Candlemas, so he could not, by his voluntary payment before the term, prejudice either creditors or his Majesty's donatar.

Fol. Dic. v. 2. p. 52. Haddington, MS. No 665.

No 2.

1611. *January 31.*WILSON *against* WARROCK.

A TENANT being called to make his farms furthcoming, as arrested for payment of his master's debt, will not be heard to defend himself by an alleged payment, made upon an assignation made by the master to pay a part of his duty as free mail, because it is not lawful, by private assignations betwixt the master and the tenant, for payment of mails or farms before the term, to prejudice the arrestments of lawful creditors of their just debts.

Fol. Dic. v. 2. p. 52. Haddington MS. No 2136.

No 3.

1628. *February 29.*LAIRD OF CLEGHORN *against* HIS FATHER'S TENANTS.

A DONATAR to a liferent having obtained a general declarator, and having arrested, in the rebel's tenant's hands, their mails and duties, pursues them for the same by a special declarator. The tenants *allege*, That they had paid the mails to their master before the arrestment. It was *replied*, Their payment before the term could not be allowed.—THE LORDS repelled the tenant's allegiance in respect of the reply.

Fol. Dic. v. 2. p. 52. Auchinleck, MS. p. 62.

* * * Durie reports this case :

In a special declarator of L. Cleghorn's liferent, at the L. of Lauchop's instance, donatar thereto, against the tenants of the rebel's lands, for payment of their farms, the years 1626 and 1627, which farms were arrested in their hands by the donatar long before the terms of payment, viz. before Martinmas the said years; and the defenders *alleging*, that they had advanced to their master the said farms, and satisfied him of the prices, convened betwixt him and them therefore, before hand, before the arrestment, which they alleged they might lawfully do, even before the terms of payment, he being then and of before their master, to whom they have been in use to pay their duties, and for whose supply and help in his necessities they might do the same lawfully at any time, nothing being done to hinder them when they transacted and made the said payment. This allegiance was repelled, and the payment advanced before the terms of payment was not sustained to liberate the tenants, seeing