

of all preceding years. It was *answered*, That the allegiance should be repelled for two causes, *1mo*, Because he was pursued for the yearly duties of the lands, the *grassum* thereof every five year; and he excepted no ways upon any payment of the *grassum*; *next*, That he was pursued as heir to his *umquhile* father before his decease. THE LORDS found the exception relevant for the ordinary yearly duty of the land during his own occupation; and repelled the allegiance, and found process for every five years *grassum* during the defender's occupation, and for the years alleged owing by his father, which they found not to be taken away by payment made of the last three years by the defender.

No 54.

*Fol. Dic. v. 2. p. 136. Haddington, MS. No 916.*

1610. February 2. MELVILL against STEWART.

No 55.

THE King's officer having acquittance of the fee or livery of two years together of any of the King's servants, will be thereby presumed to be liberated and discharged of the said fee or livery of all preceding years and terms.

*Fol. Dic. v. 2. p. 137. Haddington, MS. No 1779.*

1622. March 26. KENNEDY, DALRYMPLE against ———.

No 56.

THE LORDS found that the payment of three terms of an annualrent, confessed by oath of party, imported not liberation of all other preceding terms, unless the oath did bear, that the payment of three terms immediately subsequent one to another. See No 52. p. 11392.

*Fol. Dic. v. 2. p. 136. Haddington, MS. No 2634.*

1631. February 17. WILLIAMSON against L. BALGILLO.

Mr David Williamson, minister, charging the L. Balgillo to make payment of certain duties addebted to him by the defender, for his stipend of divers years bypast, and he suspending, That he had made payment to the charger of the duty, for the year condescended on, likeas his *umquhile* father had paid to him the same duty these two years which immediately preceded that year paid by the suspender, whereupon they had reported the charger's three several discharges of these three years, which payment presumes, in law, payment of all years before the three years discharged, and must produce liberation to him of all the said bygone years; the LORDS found, That this payment made of these three years, immediately succeeding each one to the other, without interruption or intervention of any years betwixt them, and to be proved by three several

No 57.

Three consecutive discharges by the same person, though granted to two persons, viz. two to the father and one to the son, found sufficient to liberate from bygoness.

No 57.

acquittances, as the party offered to prove, were sufficient to produce liberation to the suspender from all bygones before these years discharged, the charger not having excepted nor reserved any year therein; neither was it respected that these three discharges were not granted to one and the same person, there being two granted to the father, and one to the son, now suspender, which was found sufficient, seeing, albeit the same were granted to divers persons, yet they were granted by one person, viz. by him who acclaimed the bygones, from which he was excluded by his own deed, L. quicumque lib. 10. t. 22. C. De apochis publicis: quod licet obtineat in negotiis publicis per dictam legem, tamen et obtinet quoque in rebus privitis. et Gloss. ad Legem 2. de jure emphiteutico dicit, tenere in solutione canonis pro prædio emphiteutico, ubi dicit hanc solutionem posse probari, vel per testes, vel per confessiones, vel per scripturam, idque dicit in margine teneri ab omnibus doctoribus.

*Fol. Dic. v. 2. p. 136. Durie, p. 570.*

1631. February 19. L. MORISTON *against* TENANTS of Eastnisbet.

No 58.

To found the presumption of payment of bygones upon *apocha trium annorum*, it is necessary that the discharges be in writing.

THE L. MORISTON having comprised the lands of Eastnisbet, and being infest, and arresting the corns *in anno* 1625 in the tenants hands, after which they paid the farms that year to Eastnisbet, from whom the lands were comprised; there-after Moriston obtains decret before the Sheriff against the tenants not com-paring, for payment of that year's farms; and they suspending, upon payment made to Eastnisbet, which, albeit it was made after the charger's arrestment, yet ought to be sufficient to liberate the tenants, by reason that, since the obtaining of his sentence, the suspenders have paid their farms completely, of four succeeding years immediately subsequent to the year now acclaimed, the payment whereof they referred to the charger's own oath, and which payment so made ought to import to them liberation of that year, and of all preceding years, as effectually as if they had reported several acquittances upon the payment thereof, and which, if they had obtained, in law would have freed them, specially seeing he never quarrelled the said payment made by them of that year's farm, nor ever mentioned the payment thereof when they paid to him the year's farm sinesyne; and so he must be presumed to have allowed the payment made, otherwise he would have exacted payment of the oldest debt, and not taken payment of the last year, and omitted the former years farms. This reason was not sustained; and the payment made by the tenants after comprising and arrestment was not allowed, nor they found to be freed by the subsequent years payment made since to the charger, except they will say that he expressly remitted to them that year, and prove the same by his oath, or otherwise by writ; for albeit *trium annorum apochæ* presume *liberationem præteritorum*, that holds only where the granter of the discharges having given three in writ, and made no reservation in any of them, the law presumes he had no