

more to crave, having made no mention thereof, when he made the writ; but where payment was made without writ, the payer has followed the faith of his party; so that, if he shall say that he received that payment, without prejudice of the preceding years, as he now does, the debtor remains debtor therein, notwithstanding of the subsequent payment of the other years, and of the payment made to Eastnisbet of the year acclaimed.

No 58.

Fol. Dic. v. 2. p. 136. Durie, p. 572.

1631. March 23. L. ROSYTH against WOOD.

THE La. Rosyth, and Andrew Wood her spouse, having charged for payment of a victual duty, addebted to them by the Laird, conform to a tack of her conjunct fee lands set to him, and that for the crop 1626, for the which they had recovered decret against him; and he suspending, that since that sentence he had completely paid the crop 1627 and the year 1628, conform to their acquittances given thereupon; and also had paid the year 1629, except only 3 bolls, which he had offered upon acquittance, and was refused, and he is content presently to pay the same, and this must import to him liberation of the year 1626 controverted, and all years preceding, being *apochæ trium annorum*; the LORDS found this reason noways relevant to liberate the suspender of the years libelled, because there was no acquittance of the year 1629; but only there were produced certain particular tickets, or some partial receipts of some quantity of that year's duty, received at divers times, and which, being in sundry tickets, and received to account of that year's duty, and being all calculated together, made not up complete payment, but there was resting a little part of the whole duty, viz. 3 bolls; and, in respect thereof, they found that the suspender was not liberated thereby of the year libelled; whereas, if complete payment had been made of all, and had been instructed by acquittances, he would have been liberated that year, notwithstanding of the decret that year in special therefor; for the decret made it only appear to be a debt, which, without that sentence, would have appeared also by the tack, if there had been nothing to have taken away the same.

No 59.
Two years discharges, with partial receipts for the third, which, put together, wanted a little of the year, not found sufficient to infer presumption of payment of bygones, though the balance was offered at the Bar.

Act. Nairn.

Alt. ———

Clerk, Gibson.

Fol. Dic. v. 2. p. 136. Durie, p. 585.

1634. March 18. DOUGLAS against BOTHWEL.

THE deceast Lord Whittinghame, having a pension of L. 100, to be paid out of the blench-duties of the erection of Holyroodhouse, umquhile Mr Francis Bothwel being tutor to John now Lord Holyroodhouse, gives a bond to the said

No 60.
Three successive discharges found to support the presumption