

No 60.
of payment
of bygones,
although a
bond had been
granted by
the tutor of
the debtor,
for part of
the arrears.

Lord Whittinghame, for payment of that duty of the crop 1624, at Martinmas the said year, and dies before the term of payment; which obligation Whittinghame assigns to Douglas, his servant, who pursues the heirs and executors of umquhile Mr Francis for payment; who alleging that the Lord Whittinghame, after this bond, was in use, divers years thereafter, to receive payment from the said John now Lord Holyroodhouse of the said pension, likeas he had granted payment by three several discharges of three years payment thereof, for three years together, and which of law must presume payment of all preceding terms, and consequently must liberate from this bond: The LORDS found the exception relevant to liberate the excipient from this bond, albeit the pursuer replied, that this presumption ought not to liberate from that year whereof the party creditor had provided himself of a sufficient security by the bond, in which case the presumption ceases, and the payment made thereafter by another party, than by him who was obliged by this bond, cannot liberate him who was obliged by the bond, being a distinct party; which reply was not respected, by reason that the bond was granted by the tutor to him, who thereafter had made the payment excepted on, and also that it was so long lain over, never craved till now.

Act. *Craig.*

Alt. ———

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 136. Durie, p. 713.

No 61.

The production by tenants of a merchant's receipts for three consecutive years rents, delivered by order of their landlord, found not to import a discharge of a decree for the rents of preceding years.

1636. *March 26.* MASTER OF CORSTORPHINE *against* TENANTS.

THE Master of Corstorphine having married the relict of Mr Alexander Keith, to whom she was executrix, and thereby pursuing for certain rests of the farms of the lands of addebted by the tenants, possessors thereof, of the crops 1623, 1624, and 1625, for the which rests the said umquhile Mr Alexander had obtained sentence in his own Baron-court against them, upon their own confession, containing the special quantities of the same, and whereto his said spouse had right as executrix to him; and the tenants representing the danger of this pursuit, if the same should have way, that poor tenants, who take not acquittances when they pay their Masters farms and duties to them, may be in, the same neither being sought by their Master in his own lifetime, he living ten years after that pursuit and sentence, and never challenging them for payment, they nevertheless being many years still his tenants, and possessors of the same lands, likeas they offered them to prove that, by the space of three years together immediately subsequent to these years for which they are now pursued, they made payment of the three last years next following of the said farms to the merchants to whom their said umquhile Master sold the farms of the lands, which is alike as if they had paid himself, this being done at his

command, and in law *trium annorum cohærentium apochæ præsumunt solutionem præteritorum*; and they produced sundry tickets of these three last years, subscribed by the merchants, bearing receipt of the victual, as the same was delivered at ilk several time; which, after computation of the several receipts, they alleged would make appear that all these three years were completely paid; the LORDS repelled this exception, in respect of the foresaid decret obtained for the rests now acclaimed, and found, That the merchants tickets could not take away the same, in respect it was not shown that the Masters self had granted three several discharges of the three immediate years next subsequent to the years controverted, without which the ground in law holds not; for the Master might have directed the tenants to answer the merchant of the rests addebted by them, and the merchants tickets, albeit given in the years subsequent to the years acclaimed, did import nothing to the contrary; and therefore the exception was repelled.

Act. *M^cGill.*

Alt. _____

Clerk, *Gibson.**Fol. Dic. v. 2. p. 137. Durie, p. 807.*

No 62.

1667. *July.* Sir GEORGE PRESTON *against* Sir JOHN SCOT.

No 63.

SIR John Scot having pursued for payment of an annualrent of 500 merks out of Sir John Preston's lands, he *alleged* payment; thereupon litiscontestation being made, he produces three receipts, each L. 500, bearing to an account, and alleged that the odd 50 merks were for public burden; which completing three years, must assoilzie from bygones. It was *answered*, The dicharges bore to be granted by a factor, which was not probative, and that they wanted witnesses, and that, being given by a factor, they could not infer payment of all preceding. It was *answered*, That discharges of annualrents or rents are sufficient without witnesses.

THE LORDS found, That discharges to tenants were sufficient without witnesses, but not being granted by an annualrenter to an heritor; and found that the factor's discharge could not infer payment of bygones.

Fol. Dic. v. 2. p. 137. Stair, v. 1. p. 481.

* * The reverse was found, 14th February 1612, Wedderburn against Nisbet, No 21. p. 6322. & No 7. p. 7181.