No 5.

ders fault that they convened not to make the stent roll, which should not put them in better case than they had convened, or if they had convened and disassented. There is no reason that the disassent of a few should be preferred to the consent of the most part, who, as they may vote in the stent roll for the taxation itself, in which the plurality carries, so must they for the necessary expenses; and all that can be alleged with reason is, that the Lords may modify the expenses of a fifth part, if it be too high. The suspenders *answered*, That law authorised the Feuars, as a Court and judicature, to meet and stent, which implies a power to the plurality; but there is no such warrant for expenses, as to which, the consent of a hundred cannot oblige the disassent of one, or of one absent; and the absents have loss enough, that they have not a vote in their own stent.

THE LORDS sustained the reason of the suspension, notwithstanding of the answer, and found, That no expenses, nor any thing more than the taxation could be stented, to have effect against those who consented not; but they would modify expenses, in case of suspension, as the cause required, but modified none in this case, because a fifth part was charged for more than was due.

Stair, *v.* 1. *p.* 413.

*** Dirleton reports this case:

THE Lord Colvil being Bailie of the regality of Culross, and liable to uplift the taxation of that abbacy, and having charged certain of the vassals to pay their taxation; they suspended upon that reason, that a fifth part more than the taxation was stented upon them, on pretence, and in consideration of charges.

THE LORDS found, That they could not be stented to more than the taxation, though the Sheriff and Bailies of regality be liable to uplift the taxation.

Yet it seems hard, that they should be at the charges of raising of letters, and registration of hornings, and such like; and albeit the vassals, who are content to pay their proportion, should not be liable to more, yet it may appear, that it is reason, that when the Sheriffs or Bailies give in what they have uplifted, their charges should be allowed.

Dirleton, *No* 65. *p.* 28.

No 6.

Taxation for a particular year found discharged by a general discharge to the Sheriff, in the books of the Clerk of Taxations.

1667. *December* 6. DUKE HAMILTON *against* The LAIRD of ALLARDINE.

THE Duke of Hamilton having charged the Laird of Allardine for the six terms taxation, imposed *anno* 1633, he suspends on this reason, that four terms were paid by the Earl of Marishall, Sheriff, which exoner him, and all other persons of the shire, and is instructed by the books of the clerk to the taxations. It was *answered*, That the reason is not relevant, because the Sheriffs did or-

dinarily lift a part of all the six terms, and albeit the Sheriff completed the first four, yet he might have done it out of his own money, or out of the other two, and so when the King charges for the other two, the Sheriff's discharges will exclude him, so that he shall not want the first four, but so much of the other two; and, therefore, unless the suspender can produce a discharge of the first four, the general discharge granted to the Sheriff cannot liberate him. It was *answered*, That when the King or his collector charges, the collector's general discharges cannot but meet himself, and whether the suspender had paid or not, the general collector cannot seek these terms twice. It is true, if the Sheriff were charged, the suspender behoved to show to him his discharge, but the Earl of Marishall, Sheriff, could not charge the suspender for the taxation of these lands, because the Earl of Marishall was both Sheriff and heritor at that time, and sold the land to the suspender with warrandice. No 6.

THE LORDS found the general discharge sufficient to the suspender, against the general collector, or any authorised by him.

Stair, v. 1. p. 490.

1667. *December* 6.

COLLECTOR of the TAXATION *against* The PARSON of OLDHAMSTOCKS. No 7.

In the case, the Collector of the Taxation *contra* the Parson of Oldhamstocks, a question was moved, whether the successor in the benefice be liable for the taxation due by his predecessors, his patrimony consisting most of teinds; but was not decided at this time.

Dirleton, No 115. p. 48.

1668. *January* 17. WALTER STUART *against* ROBERT ACHESON. No 8.

Taxation found to affect those contained in the stent-roll, seeing they did not convene, and were stented; although, if they had convened, they could have freed themselves.

WALTER STUART, as being infeft in the barony of North Berwick, and being charged for the whole taxation thereof, charges Robert Acheson for his proportion, according to the stent roll; who suspends on this reason, That his interest is only teinds, which is only applied to the kirk, whereof he produces the Bishop's testificate; and, therefore, by the exception of the act of convention, he is free. The charger *answered*, *Non relevat*, because the suspender ought to have convened at the diet appointed, by the act of convention, for making of the stent roll, and there have instructed that his teinds were exhausted; wherein having failed, and being taxed, no other could pay for him, neither could the King lose that proportion. It was *answered*, That he had no interest to convene, the Minister having the only right to his teinds.