

No 5.

lands and teinds ; likeas this same Graham was also author of the pursuer's right to the same teinds, and so was common author to them both.

Act. *Stuart & Gibson.*Alt. *Hope & Mowat.*Clerk, *Gibson.**Fol. Dic. v. I. p. 112. Durie, p. 320.*

No 6.

Found that tenants might pay to their master, who had, for a certain rent, let the land, with the teinds, to them ; even after citation, at the instance of the titular ; for they could not know what part of the rent to retain for teind.

1628. *March 21.* MURRAY *against* INTROMITTERS with Teinds.

IN an action by Mr Patrick Murray, as Abbot of Inch Jaffray, against the Intromitters with the teind-sheaves of the lands within that Abbacy, for payment of the old accustomed duty used to be paid for their teinds ; the LORDS found an exception relevant, bearing payment to be made by them to their master, who set the land with the teind to them, for a certain duty, for stock and teind undistinguished, according as they were in use to pay to him diverse other years before the years libelled ; which payment, albeit the same was made by them after they were cited in this cause, and whereby the pursuer alleged, that they were in *mala fide* to do any deed in his prejudice thereafter, the LORDS nevertheless sustained it, seeing they could not know what part of their duty they should keep unpaid from their master for the teind, different from the stock, for both which they were astricted in a duty undistinguished. Also the LORDS found, That a prelate having right to teind-sheaves, if he live while the whole corns be shorn, albeit he die both before the leading of them off the ground, and also before the term of Martinmas thereafter, yet that the whole teind-sheaves will pertain to him and his executors, and that the same will not divide, as in farms and other duties, where the person having right to the same, dying before Martinmas, will only leave right to his executors to the half of that year's duties, which the LORDS find not to hold alike in teind-sheaves, where the party having right, may in law intromit with, and lead the teind-sheaves immediately after the corns are shorn, even that same day wherein they are shorn, for his right thereof will carry him to the same ; so not the terms of Whitsunday or Martinmas, nor the time of leading off the ground, but the time when the person having right, hath in law right to lead, is here considered. *See TERM, LEGAL and CONVENTIONAL. See TEINDS.*

Act. *Hope & Nicolson.*Alt. *Aiton & Stuart.*Clerk, *Hay.**Fol. Dic. v. I. p. 112. Durie, p. 366.*

No 7.

After an inhibition of teinds, the tenants continuing to pay to the person in possession,

1628. *March 27.* LO. BLANTYRE *against* PARISHIONERS of BOTHWELL.

IN the spuilzie pursued by the Lord Blantyre, mentioned 25th March 1628,* the Lords found a disposition made by him, who was author to the Lord Blantyre in his right of the teinds libelled, and granted for onerous causes to his creditor, before the right made to the pursuer ; which disposition bears : ' That

* *Durie, p. 369. voce IMPLIED DISCHARGE and RENUNCIATION.*

' the said author disponed the said right of the teind sheaves to the excipient, ' to be bruiked by him, ay and while he was completely paid of the debt owing ' to him ;' which debt was condescended on in the said bond of disposition, and conform whereto he was in possession of the said teinds, by receiving payment of the same from the tenants, occupiers of the lands, whereout of the teinds were craved, and by giving of subaltern rights of the same to the said tenants possessors, for a certain duty to be paid therefor to him ; likeas the tenants defenders compeared, and proponed this same allegiance, and *alleged*. That they had paid to him the said teinds the year controverted, which behoved to be found sufficient to liberate the tenants who had paid *bona fide* to him, to whom they were in use to pay divers years before the inhibition libelled, served by the pursuer : This disposition and exception foresaid were not sustained, neither to liberate the excipients the tenants, nor him to whom the disposition was made ; but the exception foresaid, founded thereupon, was repelled, because the tenants were not found to have paid *bona fide* for any year after inhibition ; and the disposition of the teinds, ay and while the creditor to whom it was made, were paid of the sums owing to him, was not found *habilis modus* to the receiver, to bruik the teinds valially against the pursuer, who was a singular successor ; and the right of itself not being set by way of tack, nor otherwise, to make the same real ; but being a personal security and bond, which would only work against the maker, was not found sufficient to give him right to the teinds against the pursuer, a singular successor, as said is, especially it not being set for a certain and definite time, and so was not allowed.

Fol. Dic. v. I. p. 112. Durie, p. 372.

1629. June 18.

PORTERFIELD *against* CUNNINGHAME.

A TENANT being pursued for the mails of the lands possessed by him, who alleging payment made *bona fide* by him to another, before the intenting of this cause, whom he offered to prove was heritably infeft in the lands libelled holden of the king, and to whom, as to his master, he was in use to pay his duties by the space of five years preceding the year libelled : This exception was repelled, because the pursuer offered to prove that the defender had paid two years immediately preceding the year controverted, the duties of those lands to the pursuer's author of his right ; which reply was admitted, and the pursuer preferred therein to the defender ; albeit the defender being a tenant, alleged that he ought to be preferred, tending to free himself of double payment ; which was not respected.

Fol. Dic. v. I. p. 112. Durie, p. 447.

No 7.

as formerly, their defence was repelled, because there could be no presumption of *bona fides* after inhibition.

No 8.

A tenant's exception of *bona fide* payment to another, before intenting the cause, which other he offered to prove had been infeft, was repelled, because the defender had paid the two preceding years, to the pursuer's author.