

nuded of the year 1657, nor intimation made. It was *answered*, That such a liberation is but presumptive *præsumptione juris*, and admits contrary probation, and is sufficiently taken away by the oath of the party, acknowledging that year unpaid, and the warrant given to John Stewart to lift it for his own use, before these discharges.

No 64.

THE LORDS repelled also this defence upon the three dischargees, in respect of the reply.

*Fol. Dic. v. 2. p. 136. Stair, v. 1. p. 606.*

1682. February: Earl of MARSHALL against FRASER of Strichen.

No 65.

IN an action at the instance of the Earl Marshall against Thomas Fraser of Strichen for certain bygone mails and duties, the LORDS found, That three subsequent discharges granted by the Earl's chamberlain did not liberate the tenants from preceding years, but only from the years mentioned in the discharges, the Earl being sequestrate for the time, and not *valens agere*.

*Fol. Dic. v. 2. p. 137. Sir P. Home, MS. v. 1. No 145.*

1699. December 8.

ALEXANDER GRAY against WILLIAM REID, Tenant in Wariston.

No 66.

WILLIAM REID and his father having possessed the lands of Wariston by a 19 years tack from the year 1680, Alexander Gray, as having right to the tack-duty, pursues for payment.

The defender *alleged*, That he could not be liable for rents preceding the 1687, inclusive; because he produced three consecutive discharges, one for the 1684; another for the 1685, granted by Alexander Cruikshanks, the pursuer's author, and a third for the 1686 and 1687, granted by David Cruikshanks and his tutor, who was the son and representative of the said Alexander and the pursuer's cedent.

Three consecutive discharges, two by the father, and one by the son, not equivalent to a discharge of all precedings, unless the son knew of the father's discharges.

It was *answered*; Three consecutive discharges granted by the same person, without reservation of bygones, do infer a presumption that all precedings were paid; and that presumption hath been sustained, though the consecutive discharges were not all granted to the said person, but two to the father, and one to the son; but they were never sustained when granted by different persons; nor is there reason for it; because the granter of three consecutive discharges knew of the two former when he granted the last; whereas, a son granting a discharge of a particular year, knows that the granting of a single discharge does not prejudice him as to bygones, and may be ignorant what his father had discharged.