

' 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 valuably 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.