

1664. December 2. VEATCH *against* PATERSON.

PATERSON having set some lands to Veatch *in anno* 1645, the tack contained a clause, that the tenants should be relieved of all public burdens; and having left the land in 1653, two or three years thereafter, he raised a pursuit against Paterson the heritor; for payment to him of all the public burdens he had paid out, and renews the same pursuit, and produces the receipts of the public burdens; and *alleges*, That there was a penalty of L. 100 that he should possess Veatch, at the entry of the tack, wherein he failed.

The defender *alleged*, That it must be presumed, that all the tickets and public burden were allowed in the rent, or otherwise passed from by the pursuer, seeing he voluntarily paid his whole rent; or otherwise, all the public burdens in Scotland, paid by tenants, may infer a distress upon their masters to repay the same. The pursuer *answered*, That that presumption could not take away his writ, viz. the tickets produced; but if the defender gave discharges, he ought to have made mention of the allowance of the public burdens therein.

THE LORDS having considered the case as of importance for the preparative, found the defence upon the presumption relevant, unless the pursuer instruct by writ, or the defender's oath, that these tickets were not allowed in the rent; and as for the penalty, the LORDS found, that it ought to be restricted to the damage, and that the same was not now probable otherwise than by the defender's oath.

Fol. Dic. v. 2. p. 135. Stair, v. 1. 233.

1665. June 17. MURRAY *against* THOMSON.

ONE who was creditor in an account having granted bond to his debtor for a greater sum, it it was *urged* as a presumption, That the account was reckoned upon at granting the bond, which was not found, unless the bond had borne to be after compt and reckoning.

Fol. Dic. v. 2. p. 135. Stair. Newbyth.

*** This case is No 388. p. 11214, *voce* PRESCRIPTION.

1666. June 5. MILLAR *against* HOWISON.

THOMAS MILLAR, having pursued the tenants of one Bailie, his debtor, for making forthcoming their duties arrested in their hands; compares Howison, and produces a disposition and infeftments from Bailie, of the tenements, prior to the arrestment, and craves to be preferred. It was *answered* for Millar, That

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Presumption of allowance in accounting sustained to take away a claim for public burdens paid by a tenant, tho' his tack bore to be relieved of them.

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No 42.

A party was required to instruct otherwise than by his oath, that a bond in which he was cautioner

No 42.
had existed,
and was paid,
the bond not
appearing.

Howison's disposition was null, as being *in fraudem creditorum* against the act of Parliament, being granted after the contracting of Millar's debt; and albeit the narrative of the disposition bears causes onerous, yet he offered to prove, by Howison's oath, that it was not for causes onerous, at least equivalent to the worth of the land, which was found relevant; and Howison having deponed, that his disposition was granted for a sum of 300 merks addebted to himself, and the sum of 1600 merks addebted to John Burd, for which he was cautioner for Bailie, the disponer; at the advising of the cause, it was *alleged*, That the disposition, nor the disponer's oath, could not sufficiently instruct the cause onerous; seeing the oath did not bear, that there was a price made, but only, that there was no reversion, nor promise of redemption granted; yet the disposition was truly in trust, which oft-times is tacit, as being the meaning of the parties, and is not expressed by reversion or backbond; so that if Bailie, or this arrester, would pay these sums, Howison could have no further interest. It was *answered*, That the points referred to Howison's oath were denied, and that he was not obliged to keep the bonds, but might destroy them, as being satisfied.

THE LORDS found, That as to Howison's own bond, he needed not instruct the same; but as to Burd's bond, they found, that he ought to instruct it by some adminicles, further than his own oath, that the debt was, and was paid by him, in respect his oath bore not a price made, and that he was uncle to Bailie the disponer.

Stair, v. 1. p. 372.

No 43.

1675. December 14. SOMERVILLE *against* EXECUTORS OF MUIRHEAD.

FOUND, That a bond bearing for borrowed money granted by a writer or agent to his constituent, did not infer, that the agent had got payment of all his preceding accounts; only he was ordained to depone, that the account was still resting.

Fol. Dic. v. 2. p. 135. Stair, Gosford.

*** This case is No 285. p. 11087, *voce* PRESCRIPTION.

No 44.

1678. July 24. LD ARDBLAIR *against* HUSBAND.

AN appriser having got from his debtor a bond for the precise sum in the comprising, the defence that it must be presumed to have been given in satisfaction was repelled.

Fol. Dic. v. 2. p. 135. Fountainhall.

*** This case is No 9. p. 5030, *voce* GENERAL DISCHARGE and RENUNCIATION.