

spuilzie, it wald relieve the hail defendars, but gif it wer onlie ane particular discharge of that man's pairt, it sould not liberate the rest of the defendars of thair parts.

No 3.

*Fol. Dic. v. I. p. 244. Haddington, MS. No 577.*

1610. July 27. LD. ABERZELDIE against LORD FORBES.

HE who has transacted with one of the parties whom he pursued for spuilzie and ejection, and received contentation and good deed for his renunciation, prejudices himself of his action against the rest of the defenders; but if he have discharged him without any satisfaction or good deed, only because he knew him to be innocent, that will not prejudice his action against the rest, who excepted upon a translation betwixt Aberzeldie, or Patrick Mortimer his cedent, with Monimusk, whom they had pursued, and the Lord Forbes, for that spuilzie.

No 4.

*Fol. Dic. v. I. p. 244. Haddington, MS. No 1988.*

1611. June 20. DOUGLAS against LEITH.

IN an action of spuilzie pursued by Mr Thomas Douglas, minister at Balmirnoch, *contra* David Leith, the LORDS fand an exception relevant, founded upon a discharge given to Alexander Smith, one of the parties, notwithstanding it was provided in the transaction, that it should not prejudice Mr Thomas against the remanent defenders.

No 5.

*Fol. Dic. v. I. p. 244. Kerse, MS. fol. 197.*

1668. December 19. SEATON against SEATON.

MR ALEXANDER SEATON, as executor to his brother, Pitmedden, pursues Seaton of Menzies, as representing his father, who was one of the pursuer's brother's tutors, for his father's intromission with the pupil's means; who *alleged* absolvitor, because the pupil, after his pupilarity, had granted a discharge to one of the co-tutors, which did extinguish the whole debt of that co-tutor, and consequently of all the rest, they being all *correi debendi*, liable by one individual obligation, which cannot be discharged as to one, and stand as to all the rest; for albeit *pactum de non petendo*, may be granted to one, and not be profitable to the rest, a simple discharge, which dissolveth the obligation of the bond, must be profitable to all.

THE LORDS repelled this defence, unless the discharge had borne payment, or satisfaction given, and *in tantum*, they found it would be relevant, but not a

No 6.

A discharge to one of more co-tutors was found not to liberate the rest, except in so far as satisfaction was given by the party discharged, or in so far as the other co-tutors would be excluded from recourse against the party discharged.

No 6.

simple discharge, which could only be relevant in so far as they by this tutor would be excluded from the co-tutors' bearing a share with this-tutor, *in omis-sis et male administratis*; there being nothing here but this tutor's own proper intromission; now insisted for.

THE LORDS repelled the defence simply.

*Fol. Dic. v. I. p. 244. Stair, v. I. p. 575.*

\* \* \* Gosford reports the same case :

IN the action at Alexander Seaton of Pitmedden's instance, against George Seaton of Menzies, there being a new allegiance proponed, viz. that they offer-ed them to prove, that the pursuer's brother had given a full discharge to one of the creditors, which in law must discharge them all, they being *correi de-bendi*,—THE LORDS repelled the allegiance, unless the discharge did bear, upon payment and satisfaction of the whole goods intromitted with by the whole creditors; for they found that curators, tutors, and magistrates, who were only bound *ratione officii*, the discharging of one of them will not free the rest, ex-cept it be upon payment.

*Gosford, MS. No 71. p. 25.*

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1688. July 31. THE DUKE OF QUEENSBERRY *against* WILSON of Spango.

No 7.

THE LORDS decided the cause betwixt the Duke of Queensberry and Wilson of Spango, a papist, who was pursued by the Duke to count for some years' rents, wherein he was his chamberlain. The defence was, I was only employ-ed as a factor under Mr George Blair, who was the principal chamberlain; and you have discharged Mr George, which must accresce to liberate me. *Ans-wered*, Any discharge given Mr George was without a previous counting, and only given as a personal compliment, when the Duke returned first home from France; and therefore can never exoner the sub-factors who never have count-ed, either to Mr George or him: THE LORDS ordained him to count.

1693. February 8.—THE LORDS found the instructions produced by Spango, of 1600 merks, as an article of his discharge in the account; not fully proba-tive, that the money came to the Duke's use; and the question being stated, whether the Duke's oath or Spango's should be taken thereon, it carried Span-go's: But being taken *ex officio*, they would not hold it as a full probation, but ordained him, also on a diligence, to recover Francis Kinloch's books, if any thing of this was stated there.

*Fol. Dic. v. I. p. 244. Fountainball, v. I. p. 516. & 555.*