

No 206. 1711. *June 12.* DONALDSON *against* WALKER.

A RECEIPT of money running thus, I, &c. grant me to have received, &c. in name of, &c. such a sum, as witness my hand, &c.; the LORDS found, That the money belonged to the party in whose name it was said to be received.

*Fol. Dic. v. 2. p. 151. Fountainball. Forbes.*

\*\*\* This case is No 188. p. 11511.

No 207. 1711. *July 26.*  
JAMES HALYBURTON of Foderance, *against* Mr JAMES COOK of Ardlair.

AT discussing the suspension of a charge at the instance of Foderance against Mr James Cook, for payment of the remains of a bond of 33,500 merks, granted by the latter to the former; Mr Cook, the suspender, having, conform to agreement with the charger, paid three debts to his creditors, and retired discharges thereof in the charger's name; the LORDS found, That the discharges bearing that payment was received from Foderance could not be allowed to the suspender in part of payment of the sum charged for, unless he prove by writ or oath of the charger, that payment was made by the suspender out of his own effects; albeit the discharges were still in the suspender's hands, undelivered to the charger; for he the charger could force these discharges as his own evidents from the suspender by an exhibition, Stair, B 4. T. 6. See No 17. p. 9994.

*Fol. Dic. v. 2. p. 151. Forbes, p. 534.*

1711. *July 26.*

No 208. WILLIAM NISBET of Dirleton *against* MARION JOHNSTON, Relict of  
ALEXANDER WOOD.

Discharges taken by a tenant, of debts owing by his master to a third person, were not allowed to the tenant in his accounts, in respect the discharges bore that the money was received from the master himself, although the tenant pro-

IN the compt and reckoning at the instance of Dirleton against Marion Johnston, as representing Jasper Johnston of Warieston, her father, who had been tacksman of some lands belonging to the Laird of Craightinny, the pursuer's father; the defender craved allowance of two debts she alleged were paid by her father for Craightinny to the Laird of Balmadies, conform to two discharges produced by the defender, the LORDS refused to allow this article, in respect the discharges bore, that the money was received from Craightinny himself; albeit the defender produced a declaration under Balmadie's hand *ex post facto*, that he received the money from Jasper Johnston, and *alleged*, That the taking the discharges in Craightinny's name is no argument that the payments were made by him, seeing, *imo*, The discharges remained in the custody

of Jasper Johnston, who had it in his power to have retired them, and taken in lieu thereof an assignation from the creditor; which he scrupled as little to grant, as the declaration aforesaid; *2do*, Tenants usually take discharges of cesses, ministers' stipends, or the like, in their master's name; and yet having these in their custody, never fail to get allowance of the same as so much paid of their rent; so that Craigtintny's name has been inserted only for the more easy expediting of the account betwixt him and Jasper his tacksman.

*Fol. Dic. v. 2. p. 151. Forbes, p. 537.*

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duced with the discharges an *ex post facto* declaration under the creditor's hand, that he was paid by the tenant.

1711. November 27.

RODGER GORDON of Troquhen, *against* JOHN M'GHIE of Balmaghie.

RODGER GORDON of Troquhen, and the deceased Alexander M'Ghie of Balmaghie having granted bond to Mr John Birnie for 1000 merks principal, bearing annualrent, Troquhen pursued John M'Ghie, now of Balmaghie, as representing Alexander M'Ghie, his grandfather, for payment of the equal half of some years annualrent of the bond, which the pursuer *alleged* he had paid to Birnie the Creditor, conform to several discharges produced, whereof some bear receipt of annualrents by Mr John Birnie, from Troquhen for himself, and in name and behalf of Balmaghie; and some bear only receipt of the annualrents from Troquhen, without the addition of for himself, and in name and behalf of Balmaghie.

*Answered* for the defender; The pursuer can only ask re-payment from the defender of annualrents whereof the receipts bear the money received from Troquhen. For annualrents paid upon discharges mentioning receipt of the money from the pursuer for himself, and in name and behalf aforesaid, are presumed to have been advanced by both equally; and Troquhen has been only the carrier.

*Replied* for the pursuer; The tenor of the discharges mentioning the money to be received from the pursuer, prove it was his money, unless redargued; for the addition, In name and behalf of Balmaghie and Troquhen; sheweth only, that the debt was totally extinguished as to the creditor. And had the half of the money been Balmaghie's, the discharge would not have born simply, Received from Troquhen, but received from Troquhen and Balmaghie.

THE LORDS found, That the defender ought not to refund to the pursuer the half of the annualrents, whereof the discharges bear receipt of the money from Troquhen, for himself, and in name and behalf of Balmaghie; but only that he should refund to him the half of those annualrents paid upon receipt of the

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One of two *correi debendi* took receipts for money, some of them bearing for himself and for behoof of the other, others of them not mentioning this. The former were presumed to have been advanced in proportion by the other party.