

DISCHARGE.

SECT. I.

Discharge of one *Correus* how far it operates in favour of others.

1533. *March 14.*

PATRICK MURE of Arnotstown *against* JOHN SOMERVILLE of Cambusnethan.

ANE spulzie of gudis and geir beand committit be divers and sindrie persounis, gif he againis quhom the samin is committit, his airs or successouris, or ony utheris in thair name, havand thair power thairto, quyte claime, and discharge ony ane persoun committar thairto, ather principal or complices, for ony cause properlie pertening to him who is dischargit, or for ony uther cause, all and hail the remanent persounis, committaris of the samen spulzie, on na wayis may be callit or persewit in ony time cuming thairfor.

No 1.
The pursuer of a spulzie discharging either the principal actor, or any of the accomplices, was found to liberate all the rest.

. The like decided, 25th June 1554, Kinfauns *against* John Barclay and Others. *See* No 3. p. 3556. *See* SPULZIE.

Fol. Dic. v. 1. p. 244. Balfour, (SPULZIE) No 31. p. 473.

1583. *June.*

LAIRD of GAIRNE *against* LAIRD of GUTHRIE.

THE Laird of Gairne, or some of his tenants, persewit the Laird of Guthrie for the spoliation of certain goods and geir. It was *answerit*, That the persewar had transactit with ane Ferguson, ane hielandman, and so the action was entirelie takin away. To this was *answerit*, That this Ferguson was not ane persewit be Gairne, nor conteinit in the summons, and therefore, except he had been *correus*, the allegeance aucht not to be admittit, *et hoc arg. L. 1. C. de transact.*

No 2.
Found as above.

No 2.

Nam transactio cum quibusdam facta aliis non debet prodesse. And so albeit the partie had transactit with the said hielandman, it sould not be profitable to the rest, and tak away his action that he had against them; and that specialle, because the partie had intentit no action against the said Ferguson, nor yet was he *correus debendi* into the summons. To this was *answerit*, be reasoning *inter duos*, that it may be practised *inter duos*, quod transactio cum aliqua parte ubi sunt plures rei debendi, extinguit totam actionem ne aliter acto parliamenti provisum fuerit, as was done to the executors of the cardinal, in the spulzie of the cardinal of St Andrews; and to John of Carnegie in the Parliament *anno 1581*, et hoc ubi unusquisque tenetur in solidum, et hoc de jure, *C. L. ult. de duobus reis*, interruptio enim facta per unum correorum aliis prodest, et nocet; for albeit this Ferguson was not summoned, yet he was debtful for the same cause, et ex eadem stirpe obligationis, and so the transactions with him behovit to take effect, the hail effect and cause.—THE LORDS found be interlocutor, that the transaction with Ferguson, albeit he was not summoned, extinguisht the hail action; et hoc una voce dicebant Domini quod rarum est.

Fol. Dic. v. 1. p. 244. Colvil, MS. p. 365.

1609. February 23.

M'NACHT against M'GHIE.

No 3.

The pursuer of a spulzie having discharged one of the defenders for his own part, it was found, that this discharge did not cut off the action against the other defenders.

ANE pure man callit M'Nacht, persewit M'Ghie, and certaine uthers, for spulzie of his goods. They exceptit peremptorie that they sould be assoilziet, becaus the persewar had transacted with ane of the committars of the fact be writ, and received satisfaction and dischargit him the spulzie, and sua in effect has past fra the spulzie, and having tane satisfaction from ane could persew nane of the rest. It was *ansrit* be the persewar, that the transaction could only liberate the man that was dischairgit for his own pairt, and na farder; and as the spulzie wald devyde amongst them according as they were proven to be committars *pro ratis portionibus*, sua wald it be devydit in the transaction. The defendar producit ane practic betwixt Kinfawns and Barclay of Strowie and Lindsay, No 1. p. 3555. be the whilk, in ane spulzie of evidents persewit be Kinfawns against Thaime, they having exceptit that he had transactit with the Lord Ruthven, the Laird of Bathyok, and uthers whom he had persewit; and that in ane general submission betwixt Kinfawns and the said Lord, &c. ilk ane of thaim had dischairgit uthers of all things they could claime of uther, the LORDS fand that exception relevant, and assoilziet. This was done in *anno 1554*, —It was remembrit amongst the LORDS, that, in an action of spulzie persewit be James Douglas in Leith against Wallaces, and the Laird of Bogie, the transaction betwixt the persewar and Bogie relievit the Wallaces. In this cause the LORDS fand, that gif the persewar had transactit generallie, and given an absolute discharge to any of the committars, granting him satisfied of the hail guides