

elapsed ; but evidence of payment from circumstances is to be received against every document of debt ; Stair, b. 4. tit. 45. § 23. ; Bankton, b. 4. tit. 34. § 2. Nor can it make any difference, whether the law has established with respect to such documents a longer or a shorter prescription. No 50.

Answered, When there was no other prescription of bills of exchange but that of 40 years, presumptions of payment were sometimes received against such as had stood unretired for a long tract of time, though less than the period of prescription. But the statute of 1772 seems to supersede every arbitrary determination in this matter, and to preclude all presumptions of payment, when the document is unretired, and the term of the statute not elapsed. The present, accordingly, is thought to be the first instance in which such an attempt has occurred.

THE LORD ORDINARY pronounced this interlocutor : ‘ The Lord Ordinary having considered, &c. is of opinion, that the circumstances founded on by the defender afford a strong degree of probability, that the contents of the promissory note libelled on were paid in the manner condescended on by him : But, in respect of difficulties occurring in the case, he does not think it proper for him, judging singly as an Ordinary, to cut down a clear valid obligation remaining in the hands of the creditor, and not of an old standing, upon arguments and presumptions alone, without legal or direct evidence of its extinction ; and therefore repels the defences.’

But the COURT, ‘ altered the interlocutor, and found sufficient presumptive evidence, that the promissory note libelled had been paid or accounted for by the defender to Boog.’

Lord Ordinary, *Esqgrove.* Act. *Hay.* Alt. *M. Ross.* Clerk, *Menzies.*
S. *Fac. Col. No 21. p. 36.*

S E C T. II.

Apocba trium annorum.—Taciturnity.

WEMYSS *against* LADY ST COLME.

IN an action of nullity of a tack pursued by David Wemyss, heritor of the lands of Dambursel, *contra* the Lady St Colme and her Son, the LORDS fand, That an exception of payment upon an acquittance of three terms was sufficient to induce a liberation of all bygones. No 51.

Kerse, MS. fol. 58.

- No 51. *** A similar decision was pronounced 14th February 1612, Wedderburn, against Nisbet, No 21. p. 6322.

1554. February 23.

EXECUTRIX of GEORGE FORRESTER *against* LAIRD of DREDDON.

No 52.

ANENT the action pursued by Mr George Forrester's wife, executrix to her husband, who was chamberlain to the Abbey of Holyroodhouse, against the Laird of Dreddon, for certain teinds of certain years, it was *alleged* by the said Laird, That he had acquittances of three terms, wherefor he was not obliged to show any acquittance of any terms before the said three terms, being sufficient enough for all terms preceding the said three terms. It was found by the LORDS' interlocutor, That without the said Laird would show three sundry acquittances of three sundry terms continually together, his allegiance was no ways relevant; and if he would show the said acquittances for the said three terms, as said is, it were sufficient enough for all years preceding. See No 56. p. 11393. *Fol. Dic. v. 2. p. 139. Maitland, MS. p. 114.*

1564. March 21.

YOUNG LETHINGTON *against* His FATHER and LORD ZESTER.

No 53.

Three sasines
fill the land.

GIF the superiour callis and persewis his immediate tenent, to heir and see the landis halden be him decernit to pertene to him as superiour be ressoun of non-entres, the said tenent shall be assoilzeit thairfra, and the landis with thair pertenentis on na wayis decernit in non-entres, gif he himself and twa of his forbearis immediately preceidand him, were retourit, servit and sasit, ilk ane after uthers, as immediate tenants of the said landis, with the pertenentis to the said superiours; because thre retouris, with saisines followand thair-upon in manner foirsaid, standand unreducit, are sentences in thameselfis, and fries the lands contenit thairin, with thair parts, pendicles, and pertenentis fra all foir-faltour of non-entres, for all dayis, zeiris, and termis preceidand the intending of the saidis summondis of non-entres.

Balfour, (NON-ENTRY of AIRES.) No 24. p. 262.

No 54. 1605. July 16. LADY ERROL *against* CRUIKSHANKS.

My Lady Errol pursued Cruikshanks for many years duties. He excepted upon payment of the last three years duty, which he offered to prove by writ or oath of party; and consequently, that the same behoved to infer liberation