

1624. July 24.

DONATAR OF SIR WILLIAM STUART'S Liferent *against* HIS LADY'S TENANTS.

No 3.  
A rebel died after the term of payment of farms of his Lady's jointure, by a former husband. The tenants paid the lady thereafter, who was in-  
debt. This was found *bona fide* payment as to them, when pursued at the instance of a donatar to his escheat.

SIR WILLIAM STUART, constable of Dumbarton, being rebel, the donatar to his escheat pursues the tenants of certain lands, whereof his wife was liferenter, by a conjunct-fee granted to her by the L. of Lochnoreis, her first husband, for payment of the farms of the lands of that year wherein the said Sir William died, seeing he died not while after the term of payment were both bypast of that year acclaimed, and the same were claimed by the said donatar, as pertaining to the rebel *jure mariti*, and, being owing the time of his rebellion, to him. The defenders compearing, *alleged*, That they had made payment to the lady his spouse, who was clad with the principal right, and that the rebel her husband hath only right as husband, who being dead before payment made, they behoved to be reputed in *bona fide* to have paid the same to their mistress, and ought not to pay the same again to any pretending right from the husband, or by his rebellion, which they could not know, that rebellion being unknown to them; and there being eight or nine years past since syne, during the which time there was never pursuit nor action, or any question moved, for the said farms. This exception was found relevant to liberate the tenants, and action was reserved to the donatar against the Lady, who had received payment of the farms; but the tenants always were ordained to furnish probation to the donatar, which might verify lawfully her receipt of the same, whenever the donatar should pursue her therefor.

Act. *Burnet*.

Alt. —

Clerk, *Gibson*.*Fol. Dic. v. 1. p. III. Durie, p. 141.*

No 4.

An exception against a spuilzie of teinds, that the defenders had paid their old duty to the minister, for the year libelled, by order of the pursuer's factor, sustained; although there had been an inhibition executed the year preceding; as it was not renewed for the year in dispute.

1627. February 13.

E. LINLITHGOW *against* MENZIES.

IN an action of spuilzie of teinds by the E. of Linlithgow against Menzies of Culterawis, the Lords found an exception relevant to elide the spuilzie proponed, upon payment made by the defender, at command of the Chamberlain, to the pursuer, to the minister of the parish, of the old duty, the year libelled, which was in use to be paid to the same minister, for the same teinds, the years preceding, at command of this same Chamberlain, he being still Chamberlain, the same year libelled; which was found relevant, notwithstanding that the pursuer replied upon an inhibition, executed the year immediately preceding this year libelled; and which, he alleged, did interrupt the alleged use of payment; notwithstanding whereof the exception was found relevant, seeing there was no inhibition executed this year controverted; neither was it found necessary to the excipient to allege, that the Chamberlain had warrant from the pursuer to ap-