

IMPLIED DISCHARGE AND RENUNCIATION.

S E C T. VII.

Inhibition of Teinds, how past from.—Requisition or Premonition.—Decree Arbitral.—Recognition.—Legal Exception.—Provision of Conquest.

1615. July 15. BALFOUR *against* The LO. BALMERINOCK.

No 35.

IN an action of spuilzie pursued by Mr Andrew Balfour, parson of Langnewton *contra* the Lo. Balmerinock, the LORDS found that the receipt of a peck of oats and a turse of straw, which was a part of the old duty, was enough to take away the inhibition.

Fol. Dic. v. i. p. 433. Kerse, MS. fol. 999.

1625. July 12. HENRISON *against* EARL LINLITHGOW.

No 36.

THE Earl of Linlithgow having borrowed from one Henrison the sum of 2000 merks, he gave to the party infestment and possession of some lands, for the security of the money, which he was obliged to pay upon requisition; and being required to pay it against Whitsunday, and after the term being charged therefor, the LORDS suspended that charge, because they found, that the charger had possessed the land, which was given to him in wadset for the money, by eating of the grass, and pasturage of his goods thereupon, after the term of Whitsunday, against the which the requisition of payment was made; whereas, if he had expected that payment was to have been made to him at

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that term, conform to his requisition, he should have left the possession of the roun; and albeit that the party offered to make satisfaction for the grass eaten by his goods, since the term of Whitsunday, yet that was not respected, but repelled by the LORDS; for they found, that by the said pasturing, and retaining of that manner of possession, he had *tacite* past from his requisition.

Act. Nicolson.

Alt. ———.

Clerk, Gibson.

*Fel. Dic. v. I. p. 433. Durie, p. 176.*1628. *March 18. LO. BLANTYRE against PARISHIONERS OF BOTHWELL.*

No 37.
Taking payment of the old teind-duty, though for one year only, was found a passing from a preceding inhibition, so that the tenants were liable only for the old duty, till a new inhibition was served; but payment of a pension due to the pursuer out of the teinds, was found not to import a passing from the inhibition.

IN the spuizie of the Lord Blantyre's, mentioned No 15. p. 217, the LORDS found, that an inhibition used against the defenders, for their teind-sheaves of one year, was a sufficient ground to exclude the persons inhibited that year from any defence, which they might propone, that they could not be pursued for any greater duty than the rental-bolls, or the duty accustomed to be paid for these teinds in the preceding years, for any year subsequent to that year, for which inhibition was served; which old use of payment, the LORDS found was interrupted for all the years subsequent, after that year of the inhibition, whereof the pursuer had not received payment, nor prejudged the said inhibition by receiving the old duty thereafter, albeit there was no inhibition served each year thereafter upon the saids teind-sheaves, notwithstanding whereof the pursuer might pursue for such quantities, as he should prove the teinds to have extended unto the years libelled, wherein no inhibition was served, the old use of payment being interrupted as said is, by the inhibition served for one preceding year.

1628. *March 25.*—IN a spuizie pursued by Lord Blantyre, mentioned 15th and 18th March 1638, the LORDS found the receipt of the old accustomed duty, used to be paid for teind-sheaves received for one year subsequent to a preceding year, for the which inhibition was served at the instance of the pursuer, prejudged the pursuer, that he could not seek any greater duty for the said teinds, neither that year whereof he received the old duty after the inhibition, nor for any other year thereafter, for the which he had not served inhibition; for the said inhibition was found to be prejudged, and in effect was past from by the pursuer, by his foresaid receipt of the said old duty thereafter, whereby it could not be counted an interruption, and therefore that the defenders should pay no more for the teind-sheaves, but the said old duty, for any years for the which they were not interrupted after the receipt, since the inhibition, as said