

No 1. could not be compelled to make payment of his farms before Candlemas, so he could not, by his voluntary payment before the term, prejudice either creditors or his Majesty's donatar.

Fol. Dic. v. 2. p. 52. Haddington, MS. No 665.

No 2.

1611. *January 31.* WILSON *against* WARROCK.

A TENANT being called to make his farms furthcoming, as arrested for payment of his master's debt, will not be heard to defend himself by an alleged payment, made upon an assignation made by the master to pay a part of his duty as free mail, because it is not lawful, by private assignations betwixt the master and the tenant, for payment of mails or farms before the term, to prejudice the arrestments of lawful creditors of their just debts.

Fol. Dic. v. 2. p. 52. Haddington MS. No 2136.

No 3.

1628. *February 29.* LAIRD OF CLEGHORN *against* HIS FATHER'S TENANTS.

A DONATAR to a liferent having obtained a general declarator, and having arrested, in the rebel's tenant's hands, their mails and duties, pursues them for the same by a special declarator. The tenants *allege*, That they had paid the mails to their master before the arrestment. It was *replied*, Their payment before the term could not be allowed.—THE LORDS repelled the tenant's allegiance in respect of the reply.

Fol. Dic. v. 2. p. 52. Auchinleck, MS. p. 62.

* * * Durie reports this case :

In a special declarator of L. Cleghorn's liferent, at the L. of Lauchop's instance, donatar thereto, against the tenants of the rebel's lands, for payment of their farms, the years 1626 and 1627, which farms were arrested in their hands by the donatar long before the terms of payment, viz. before Martinmas the said years; and the defenders *alleging*, that they had advanced to their master the said farms, and satisfied him of the prices, convened betwixt him and them therefore, before hand, before the arrestment, which they alleged they might lawfully do, even before the terms of payment, he being then and of before their master, to whom they have been in use to pay their duties, and for whose supply and help in his necessities they might do the same lawfully at any time, nothing being done to hinder them when they transacted and made the said payment. This allegiance was repelled, and the payment advanced before the terms of payment was not sustained to liberate the tenants, seeing

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before the said terms of payment, the donatar had arrested the same *debito tempore*; for, if it should be lawful to allow this payment made before hand, before the terms, the donatar and creditors might ever be prejudged; and, therefore, those who pay before they can by law be compelled, must do the the same *suo periculo*, and not to the hurt of others, and they should provide for their own relief.

No 3.

Act. *Mowat.*

Alt. _____

Clerk, *Hay.*

Durie, p. 352.

1629. June 12.

GRAY against CAMPBELL.

SOME feu mails, for divers years and terms to come, paid and advanced to the heritor or lifereater, or any other having right to the lands, by the tenants, is not allowed to liberate the payer of those terms which were not come the time of making of the payment, if he, to whom the payment was made, shall happen to be denuded of his right, in favours of any other, before the expiring of these terms, the duties of which terms will pertain to him, who then shall have right to the land, notwithstanding of the tenant's payment making to his master before hand, the master then having a right undenuded, but prejudice of the tenant's relief against the master to whom he paid, or for whom he paid to another, there being no real deed done by the tenant to affect the land to him, whereby to retain the duties for his relief.

No 4.

Fol. Dic. v. 2. p. 52. Durie, p. 445.

1662. January 7.

EARL of LAUDERDALE against TENANTS of SWINTON.

EARL of LAUDERDALE, as having right to the forfeiture of the barony of Swinton, pursues the tenants for mails and duties. George Livingston, one of them, *alleges*, That he must be assoilzied from one year's duty, because he offers him to prove, that it is the custom of the barony of Swinton, at least of a distinct quarter thereof, that the tenants do always at their entry pay half a year's rent, and are free of rent at the term they remove, and so do all along pay a year, at the least half a year before the hand; and subjoines, that he has paid accordingly to Swinton himself, for a term's mail, due for the crop which is after the pursuer's right. The pursuer *alleges, Non relevat* against him a singular successor, or against the King his author; because, that party that hath right to the land, hath right to the fruits, and so to the rents which are payable for the fruits which were extent upon the land, or growing after that party's right, and no payment before the hand can liberate the possessor.

No 5.

Payment of rent made at entry, such being the custom of the barony, found relevant against a donatar of forfeiture.