

1664. December 2. VEATCH *against* PATERSON.

PATERSON having set some lands to Veatch *in anno* 1645, the tack contained a clause, that the tenants should be relieved of all public burdens; and having left the land in 1653, two or three years thereafter, he raised a pursuit against Paterson the heritor; for payment to him of all the public burdens he had paid out, and renews the same pursuit, and produces the receipts of the public burdens; and *alleges*, That there was a penalty of L. 100 that he should possess Veatch, at the entry of the tack, wherein he failed.

The defender *alleged*, That it must be presumed, that all the tickets and public burden were allowed in the rent, or otherwise passed from by the pursuer, seeing he voluntarily paid his whole rent; or otherwise, all the public burdens in Scotland, paid by tenants, may infer a distress upon their masters to repay the same. The pursuer *answered*, That that presumption could not take away his writ, viz. the tickets produced; but if the defender gave discharges, he ought to have made mention of the allowance of the public burdens therein.

THE LORDS having considered the case as of importance for the preparative, found the defence upon the presumption relevant, unless the pursuer instruct by writ, or the defender's oath, that these tickets were not allowed in the rent; and as for the penalty, the LORDS found, that it ought to be restricted to the damage, and that the same was not now probable otherwise than by the defender's oath.

*Fol. Dic. v. 2. p. 135. Stair, v. 1. 233.*

1665. June 17. MURRAY *against* THOMSON.

ONE who was creditor in an account having granted bond to his debtor for a greater sum, it it was *urged* as a presumption, That the account was reckoned upon at granting the bond, which was not found, unless the bond had borne to be after compt and reckoning.

*Fol. Dic. v. 2. p. 135. Stair. Newbyth.*

\*\*\* This case is No 388. p. 11214, *voce* PRESCRIPTION.

1666. June 5. MILLAR *against* HOWISON.

THOMAS MILLAR, having pursued the tenants of one Bailie, his debtor, for making forthcoming their duties arrested in their hands; compares Howison, and produces a disposition and infeftments from Bailie, of the tenements, prior to the arrestment, and craves to be preferred. It was *answered* for Millar, That

No 40.

Presumption of allowance in accounting sustained to take away a claim for public burdens paid by a tenant, tho' his tack bore to be relieved of them.

No 41.

No 42.

A party was required to instruct otherwise than by his oath, that a bond in which he was cautioner