

the whole from me, but must deduce his share and proportion; because you have precluded me of my relief against him *pro tanto*. But the generality of the Lords thought, that if it was only *pactum de non petendo*, and a discharge without any other onerous cause but favour, he could not be hindered to exact the whole from the other *correus debendi*; but if it was on payment, or receipt of sums of money, more or less, that he could not exact double payment; but thought a gratuitous discharge could not cut off the other's relief. See 10th July 1680, *Leith*.

The Lords, before answer, ordained the discharge to be produced, that they might see whether it proceeded upon payment or not. *Vol. I. Page 582.*

1693. *December 22.* The ADMINISTRATORS of HERIOT'S HOSPITAL *against* ROBERT HEPBURN of BEARFORD.

THE Lords found the pursuer's infestment, in a ground annual out of the tenement called Robertson's Inn, was a sufficient title whereon to call in a reduction and improbation for the rights of property; seeing it was only to this effect, To remove all impediments out of the way why they might not point the ground for his annualrent. But, whereas the Hospital insisted for production of his progress of writs in that tenement from the Bishop of Dunkeld, whom he disclaimed to be his author, the Lords found he was obliged to produce no writs, for satisfying the production in the reduction, but those that flowed from their common author. But, *quoad* the improbation, it was not a good defence that his rights flowed from the Earl of Crawford, as donatar to Crighton's bastardy; and so not from the Bishop of Dunkeld, the mortifier of the pursuer's annualrent; which Bishop he denied was ever heritor of this tenement: for, seeing they offered to improve them as false and feigned, he behoved to produce all upon his peril, else certification would pass. And as to the declarator, sustained it, as accords. *Vol. I. Page 583.*

1693. *December 23.* FLETCHER of ABERLADY *against* The HEIRS of MR WILLIAM FLETCHER, Advocate.

IN a pursuit by Fletcher of Aberlady, against the Heirs of Mr William Fletcher, advocate,—witnesses being adduced by Aberlady to prove that Mr William held courts, and decerned the tenants; and it being OBJECTED, That the witnesses were moveable tenants to the adducer, and so not receivable:—It was ANSWERED, *imo*. That objection was introduced when they could be removed without previous warning; but now, since the Act of Parliament, they having time to provide for themselves, they were not liable to so much impression as before. The Lords repelled this answer. Then ALLEGED,—They had got tacks; and, though it be since their citation to be witnesses, (for it might be more dubious if it were only after their citation in the cause,) yet it puts them out of the hazard of being removed; and so were receivable. The Lords thought it very suspicious, and therefore refused them. *Stio*. ANSWERED,—There is