

No 206. 1711. *June 12.* DONALDSON *against* WALKER.

A RECEIPT of money running thus, I, &c. grant me to have received, &c. in name of, &c. such a sum, as witness my hand, &c.; the LORDS found, That the money belonged to the party in whose name it was said to be received.

Fol. Dic. v. 2. p. 151. Fountainball. Forbes.

*** This case is No 188. p. 11511.

No 207. 1711. *July 26.*
JAMES HALYBURTON of Foderance, *against* Mr JAMES COOK of Ardlair.

AT discussing the suspension of a charge at the instance of Foderance against Mr James Cook, for payment of the remains of a bond of 33,500 merks, granted by the latter to the former; Mr Cook, the suspender, having, conform to agreement with the charger, paid three debts to his creditors, and retired discharges thereof in the charger's name; the LORDS found, That the discharges bearing that payment was received from Foderance could not be allowed to the suspender in part of payment of the sum charged for, unless he prove by writ or oath of the charger, that payment was made by the suspender out of his own effects; albeit the discharges were still in the suspender's hands, undelivered to the charger; for he the charger could force these discharges as his own evidents from the suspender by an exhibition, Stair, B 4. T. 6. See No 17. p. 9994.

Fol. Dic. v. 2. p. 151. Forbes, p. 534.

1711. *July 26.*

No 208. WILLIAM NISBET of Dirleton *against* MARION JOHNSTON, Relict of ALEXANDER WOOD.

Discharges taken by a tenant, of debts owing by his master to a third person, were not allowed to the tenant in his accounts, in respect the discharges bore that the money was received from the master himself, although the tenant pro-

IN the compt and reckoning at the instance of Dirleton against Marion Johnston, as representing Jasper Johnston of Warieston, her father, who had been tacksmen of some lands belonging to the Laird of Craightinny, the pursuer's father; the defender craved allowance of two debts she alleged were paid by her father for Craightinny to the Laird of Balmadies, conform to two discharges produced by the defender, the LORDS refused to allow this article, in respect the discharges bore, that the money was received from Craightinny himself; albeit the defender produced a declaration under Balmadie's hand *ex post facto*, that he received the money from Jasper Johnston, and *alleged*, That the taking the discharges in Craightinny's name is no argument that the payments were made by him, seeing, *imo*, The discharges remained in the custody