

No 20.

damage and interest. From all which it follows, the College's right to the mails and duties of the lands of Newgrange, being a conveyance by progress from Sir Philip the proprietor to them, whenever Sir Philip's right ceases by Mr Haldane's infeftment, that the College's mails and duties must cease of course, which no mid impediment can prevent.

"THE LORDS preferred the College, assignee to the mails and duties; at least for the annualrents, ay and while the purchaser's right be complete by infeftment; and reserved to themselves afterwards to consider whether the assignee's preference shall continue after infeftment."

*Fol. Dic. v. 1. p. 423. Rem. Dec. v. 1. No 81. p. 159.*

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SECT. III.

Conveyance of Superiority, does it carry casualties already fallen?

No 21.

A singular successor in the superiority cannot challenge the feu *propter non solutum canonem* of any years in his author's lifetime, but only since the conquest of his own right.

1612. February 14.

WEDDERBURN *against* NISBET.

A FEU being sought to be reduced by the Laird of Wedderburn, against Nisbet of Swansfield, the LORDS found that he could not quarrel the feu *propter non solutum canonem* of any years in the pursuer's author's time, but only for the time of his conquest of his own right; that payment of three years together in an acquittance, inferred presumed liberation of the duties of all preceding years; that payment made to a Baron's chamberlain or factor, who was in use to uplift all his master's rents of the barony, and his acquittance given thereupon was sufficient to the vassal, and that factor's acquittance of three terms would save the vassal from danger of the clause irritant; that the superior's precept of *clare constat* given to the feuer voluntarily, relieved him of the danger of preceding years; and that the heir of the vassal being minor, and seeking entry to his lands by his superior, if at his lord's command, he delivered his predecessor's charter to any notary or writer being the superior's servant, to form to him a precept of *clare constat*, so long as that notary kept the minor's charter, and expedite not his precept, the vassal could not forfeit his feu for not payment of the duty of these years; because the retaining from him of his charter, put him in *probabili ignorantia* of the feu-duty addebted by him, and of the clause irritant; especially if he, recovering his charter, made real offer of all feu-duties owing before the day of compareance in the cause of reduction.

*Fol. Dic. v. 1. p. 423. Haddington, MS. No 2405.*