

1680. July 21. . VISCOUNT of ARBUTHNOT *against* RAIT of Halgreen.

IN the mutual declarators between the Viscount of Arbuthnot and Rait of Halgreen, the Viscount concluding that Halgreen had incurred the irritancy of his feu-charter through not paying of his feu-duty for two or three years together; the other craving liberation therefrom, because of payment of some, and timeous offer of the rest;—this cause being reported, the LORDS “found, that the superior’s granting a precept of *clare constat*, does import and infer a presumptive probation that the double of the feu-duty was paid to the superior, unless he will offer to prove, by the vassal’s oath, that the same was not paid; and find, that the precept being dated in October 1676, it does purge for the current year, viz. for the feu-duty owing at the Whitsunday preceding, and likewise for the half year owing at the Martinmas subsequent to the precept, though the term of payment was not yet come; so that none of these two terms can be counted or made use of, to make up or infer the vassal’s failzie or commission of the clause irritant: But assoilzie Arbuthnot from that conclusion of Halgreen’s declarator, bearing, that he, the vassal, ought to be free of offering his feu-duty hereafter, unless his superior (who hath refused it now these several years) required him; and find the vassal is liable to offer the feu-duty, albeit the superior do not require him.” I find the customs of France agree with this; if the superior be absent, or refuse, the vassal must take instruments upon his offer and the superior’s refusal. So after this decision, there is no more room for doubting but a precept of *clare constat* cutteth off and dischargeth all preceding feu-duties, not as an absolute discharge thereof, but so as the want of these feu-duties, owing for years before the precept, cannot be counted, nor made use of by the superior against his vassal, for losing and amitting his feu, for not payment of the feu-duty; the precept being a dispensation *quoad* that caducity whether incurred in whole or in part, whether it have a clause of *novodamus* in it or not.

Fountainhall, v. 1. p. 109.

1684. January 31. . SETON *against* COCKBURN.

THE compt and reckoning between Sir Walter Seton and Sir James Cockburn is reported by Pitmedden; and the LORDS assoilzie Sir James conform to his articles of discharge, unless Sir Walter offer to prove, by Sir James’s oath, that the instructions are in his own hands, which he is ready to depone he gave up at the time of the compting; and ordain Sir James to compt for the deleted articles.

Fol. Dic. v. 2. p. 135. Fountainhall, v. 1. p. 265.

No 45.
Found, that a superior’s granting a precept of *clare constat* inferred a presumptive probation that the double of the feu-duty had been paid to the superior, unless he would offer to prove by the vassal’s oath, that it was not paid.

No 46.
By a fitted account, prior accounts are held to have been settled.