

1678. January 15.

CRUIKSHANK against MORISON.

THE Viscount of Fren draught having disposed, by wadset, to John Watt the Kirk-town of Forgie, to be holden of himself feu for twenty shilling of feu-duty, and for payment of L. 80 of superplus rent yearly, whereupon infestment followed, and whereunto Bogaie hath now right; the Viscount disposed the L. 80 yearly to David Cruikshank, who thereupon pursues a poinding of the ground. The defender *alleged*, That he ought to have allowance of the public burdens effeing to the L. 80, which is the third of the rent, seeing public burdens being *debita fundi*, must burden all that have interest proportionally. The pursuer *answered*, That, by constant custom, feu-duties are free of all public burdens, and are understood to be given and accepted without all burden; and if it were otherwise, in all pursuits for feu-duties, this would be an obvious defence, which was never proponed nor sustained, and would hinder all payments of feu-duty till count and reckoning; neither were ever feu-duties contained in any valuation of the shires, which is the only ground of public burdens by assessment, nor were they ever found to bear taxation. The defender *replied*, That all annualrents and pensions, though contained in no valuation, which is only of the lands, do suffer abatement according to their proportion with the rent; and though it hath not come to be controverted, the same reason holds for feu-duties, especially where they are considerable; *2do*, This L. 80 is no feu-duty, but an annualrent; for it is clear, by the wadset-right, that the feu-duty is twenty shilling, with an obligation to pay L. 80 as superplus rent, which being a part of the real right, may be a title for poinding of the ground, but not as a feu-duty.

THE LORDS found, That there being a several express feu-duty of twenty shilling, that this L. 80 was not a feu-duty, but was liable to an abatement for public burdens.

Stair, v. 2. p. 591.

1681. January 11.

THE TOWN of BAMFF against RUSSELL.

THE Town of Bamff having charged Russell for the supply and some other feu-duties of the Town, he suspended upon this reason, That the stent-roll is most exorbitant, burdening him with more than the half of the burden of the Town, and that the stent-roll first produced did not bear the oath of the stenters, and that the second roll, bearing their oaths, now produced is not signed by them but by the clerk.

THE LORDS ordained either party to condescend upon the most unsuspected persons in Town, that they should name three or four to stent the suspender

No 15.

Feu-duties were found not to be abated by public burdens, but a surplus duty besides the feu-duty was found liable for public burdens.

No 16.

- No 16. upon oath in his just proportion with the rest of the Town, and that in respect of the exorbitancy of the suspender's proportion.

Stair, v. 2. p. 831.

. Sir P. Home reports this case:

1681. *December.*—PATRICK RUSSELL, late Bailie of Bamff, being stented by the Magistrates of Bamff in the sum of L. 49 Scots as his proportion of the public imposition; whereupon he being charged, he suspended upon this reason, That he was unjustly and exorbitantly stented; as also, the stent was not warrantable, the same not being constituted by sworn stent-masters; which being found relevant, the LORDS granted commission to four men within the burgh, two to be chosen by the Magistrates and two by the suspender, to revise the stent and make report to the Lords.

Sir P. Home, MS. v. 1. No 49.

- No 17. 1686. *February 1.* The Lady SAMFORD *against* The TENANTS.

FOUND that a wife infeft in an annualrent of victual for her jointure, is liable to pay assessments and public burdens, as if it were money.

Harcarse, (CONTRACTS OF MARRIAGE.) No 378. p. 98.

- No 18. 1688. *January.* Lady ELSH-SHEELS *against* The Laird of ELSH-SHEELS.

FOUND that a liferent of an annualrent of money or victual due to a relict, was subject to public burdens as well as liferent of lands, unless there be a personal obligation to pay.

Fol. Dic. v. 2. p. 290. Harcarse, (LIFERENTS.) No 672. p. 191.

. Sir P. Home reports this case:

IN an action at the instance of the Lady Elsh-sheels against the Laird, the LORDS found, That the Lady's liferent-annuity was not to be burdened with the public burdens, in case the Lady make it appear, that the time of the contract of marriage, the Tenants of the lands were obliged to relieve the heritor of the public burdens.

Sir P. Home, MS. v. 3.