

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.