

S E C T. II.

Whether a precept of *clare constat*, granted by a Superior, implies a discharge of Casualties.

1612. February 14. LORD WEDDERBURN *against* NISBET.

FOUND, that the superior's precept of *clare constat* given to the feuer was a discharge of bygone feu duties.

No 8.

Fol. Dic. v. 1. p. 431. Haddington, MS.

* * * See this case, No 21. p. 6322.

1668. June 24. ANDREW GRAY *against* HOWISON and GRAY.

ANDREW GRAY being infeft as heir to his grandsire, in certain lands of the barony of Foulis, held blench of the house of Gray, pursues a reduction of a late infeftment in *anno* 1655, granted to Walter Watson, as long posterior to his right. Compearance is made for William Gray of Haystoun, as being infeft by the Lord Gray, and Sir George Kinnaird, who was donatar to the recognition of the estate of Gray, by the alienation of this Lord's father; which recognition hath been declared by the Lords; and *alleged*, that he hath the only right; because, by the recognition, the old rights of the house of Gray being void, the pursuer's subaltern right fell in consequence therewith. The pursuer *answered*, That before the defender's right, he had obtained a precept of *clare constat*, acknowledging his old right, whereupon he was infeft. It was *answered*, That the precept doth bear expressly to be in obedience of precepts out of the chancellary upon the pursuer's retour, and so being a necessary act, and not voluntary, it could be no acknowledgement or ratification of the pursuer's right.

THE LORDS having considered the precept, that albeit it mentioned the retour in obedience to the precept, yet it bore also, *et quoniam mihi clare constat, &c.* in the common strain of a precept of *clare constat*, acknowledging the pursuer's predecessor's right and his own,

They found that it did exclude the donatar, and all having right from him thereafter, and after the sasine past thereon.

Fol. Dic. v. 1. p. 431. Stair, v. 1. p. 542.

No 9.

A precept of *clare constat*, granted after recognition, was found to imply the superior's passing from the recognition.