

property of those ways to the town, but only a *jus servitutis viæ, itineris vel actus*, they being *juris publici* for the conveniency of travellers; and, if they encroach to appropriate these ways, they may be pursued for purpersion: And the case of Forbes of Culloden and the Town of Inverness, 14th and 16th July and 7th November 1674, *voce* PRESCRIPTION, was rather for Biggar than against him; for it was found they could not burden their feuers with their own private stents, but only with the King's stents, as it is recorded both by Stair and Dirleton, though the last differs in his own opinion from the decision.—THE LORDS found the defender, by the *reddendo* of his charter, not liable to the burgal prestations of watching and warding; but, as to the militia, quartering, thirlage, &c. they ordained the parties to be farther heard.

On a subsequent debate, the Lords found these lands lay within the territory and jurisdiction of the shire, and not of the town, and so must pay cess, out-reck militia, and other burdens, with the shire.

*Fol. Dic. v. 1. p. 117. Fountainball, v. 2. p. 18.*

No 41.

1745. June 7. INHABITANTS of the CALTON *against* The CANONGATE.

It being ordinary to quarter part of the soldiers lying in the suburbs of Edinburgh upon the inhabitants of the Calton, they brought a declarator of their immunity therefrom, as being part of the shire no way subject to the town of Edinburgh, and therefore free in virtue of act 9, § 7. King W. whereby soldiers are ordained to be quartered in burghs royal, or of regality, or the most capable market towns within shires, neither of which the Calton is; and so, they pleaded, was decided in the case of the inhabitants of the Abbey-hill.

*Answered,* The design of the act was not to free the suburbs of towns lying immediately contiguous, and enjoying the advantages of the trade and markets of the town, as appears from the whole clause, which ends thus, 'And that they shall not be quartered upon tenants in dispersed onsteads in the country;' and the Abbey-hill is a village not contiguous but lying at a competent distance from the town.

THE LORDS, 10th February 1744, Found that the inhabitants of the Calton were not exeemed from quartering.

This day, on a bill and answers, they adhered.

Act. *Cb. Arskine.*

Alt. *W. Grant.*

Clerk, *Murray.*

*Fol. Dic. v. 3. p. 104. D. Falconer, v. 1. p. 93.*

No 42.

Suburbs, tho' not subject to the town's jurisdiction, are liable to quarter soldiers.