

or unconnected inhabitants of towns, so by the universal usage of Scotland, it is confined to the constituent members or burgesses; and, by that usage, the meaning of those enactments, so far as indefinite, is to be determined. Nay, by such immemorial custom, even contrary enactments would have been repealed or abrogated; Erskine, b. 1. tit. 1. § 45. The last-mentioned statute of 1698, corrected an abuse committed in the country, under the pretence no doubt of the necessity of resorting thither for provender to the army; but it surely indicates no extension of the burden beyond its proper limits in towns.

Answered; If a public burden is to be imposed, it were hard, that those only who are most able to bear it should be exempted, to increase the load of such as are least able. The words of the statute of 1698 are general, admitting no exception, but that singly in behalf of tenants in dispersed onsteads "in the country." Nor could any posterior practice abrogate the law. For the annual mutiny-act declares that the quartering of soldiers shall be regulated "by the laws of Scotland which were in force at the time of the Union.

The Lord Ordinary reported the cause, when

The COURT considered the plea of the pursuers as strongly founded in the usage; and it was observed, that prior to the act 1698, there must have been the same usage as afterwards, seeing there was nothing in that statute to introduce a change.

THE LORDS decerned in the declaratory action, "finding the pursuers exempted from the charge in question.

Reporter, Lord Alva.

Act. Rolland.
Clerk, Home.

Alt. Lord Advocate, A. Ferguson, Hope.

Fol. Dic. v. 4. p. 193. Fac. Col. No 53. p. 103.

1794. February 7.

MILL against SKENE.

THE lands of Waterston were separated from the barony of Fearn in 1713, in consequence of a minute of sale, by which the purchaser became bound to relieve the seller from a proportion of the cess. In 1722, these lands were purchased, and have ever since been possessed by the family of Skene of Skene. In 1766, the predecessor of Mr. Mill purchased the barony of Fearn; and the latter, in 1792, brought an action against Skene, stating, that the valuation of Waterston had never been disjoined from that of Fearn, the proprietor of the latter having always paid the same quota of public burdens since, as before the sale; and concluding for repetition of bygones, and relief as to future payments. Skene, in defence, pleaded the negative prescription, and *urged*, That as a charter and sasine forty years back would have precluded the pursuer from claiming the property of the lands, it must equally preclude his claim to the

No 26. payments demanded out of them. THE LORDS found, that the pursuer's claim of relief could not be lost by the negative prescription.

Fol. Dic. v. 4. p. 193. Fac. Col.

* * * This case is No 22. p. 10715, *voce* PRESCRIPTION.

1794. *May 27.*

JAMES KELL and others *against* The STENT-MASTERS and COLLECTOR of the Cess in the Burgh of Saltcoats.

No 27.
Manufacturers and mechanics, in a burgh of barony, are liable for a proportion of the cess paid by it for the communication of the privilege of foreign trade.

THE burgh of barony of Saltcoats in 1710 obtained a communication of the privileges and trade of the royal burghs, upon paying a certain part of the cess with which they are burdened.

The stent-masters in this burgh had been in the practice of laying two-thirds of this tax upon merchants, sailors, and rope-makers, and the other third upon retailers of home commodities, tradesmen, and labourers.

James Kell, and others, inhabitants of the burgh, most of them falling under the latter description, presented a bill of suspension and interdict, in which they

Pleaded; The royal burghs possessed, till the end of last century, the exclusive privilege of foreign trade. This monopoly being prejudicial to the public interest, the statute 1693, c. 30. enacted, that the benefit of trade should be communicated to burghs of regality and barony, upon their relieving the royal burghs of a tenth of the cess formerly paid by them. This burden ought therefore not to be exigible from the whole inhabitants of such burghs, but only from those who are immediately and directly benefited by those privileges, of which it may be considered as the price; and accordingly the act 1693 authorises the magistrates to appoint stent-masters "for laying on the burden upon the trade, and others who have benefit by trade;" thus clearly pointing out, that the tax is to be paid only by foreign merchants; the last words, "others who have benefit by trade," plainly including only persons retailing foreign commodities, who, although they do not trade themselves, yet derive a direct benefit from it.

For the same reason, the statute authorises the laws, securing the trade to royal burghs, to be put in execution only against "such unfree traders in burghs of barony as shall not undertake for and pay a proportion of said quota."

Farther, the act 1698, c. 20. enacts, "That the said quota and subdivision being once stated, all persons, inhabitants of the said burghs, partaking of the communication, shall be stented for the quota appointed." Now, these words, "partaking of the communication," clearly qualify the general words, "all persons inhabitants," as they cannot be supposed to refer to the immediately preceding word, "burghs;" for the quota could not possibly be laid on any