

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 or 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

other burghs except those which had accepted of the communication; and therefore it would have been quite superfluous to have said, that the quota was to be laid on "burghs partaking of the communication."

The plea of the suspenders is likewise confirmed by the act 1698, c. 19. which clearly shews, that the foreign trade was meant to be assessed, and that every kind of home trade or manufacture might be carried on as formerly without limitation or control.

Answered; It is clear from all the statutes, that it was not any particular class of inhabitants, but the burgh of regality and barony themselves, which were to be assessed. Thus, in the preamble of the act 1693, it is stated; "That the convention of royal burghs &c. being willing to communicate the benefit of trade, &c. in favours of burghs of regality and others that could relieve them of a proportional part of the burden imposed upon trade, &c. It enacts "That sicklike execution shall pass against the burghs of regalities, baronies, &c. as is used for in-bringing of the cess payable to their Majesties by the royal burghs;" and a subsequent clause provides for equality in levying the burden within the burghs themselves partaking of the communication. The act 1698, c. 19. also declares, that thereafter foreign trade shall be "the privilege of freemen and burgesses of burghs royal, and of such to whom the said privilege shall be communicated."

It is also enacted by the 1698, c. 20. that burghs obtaining the communication shall be assessed for their quota, "as is the use in royal burghs." Now, the act 1592, c. 155. provides, "That all manner of persons, inhabitants of burghs, concerned in any manner of traffic, merchandize, or having change within the same, shall bear their part of all taxes, stents, and taxations," &c. And this statute is confirmed by the act 1594, c. 226. which enacts, "That the same shall be extended to all merchants or craftsmen, as well free as unfree, that have no other dwelling place but within burgh," &c.

As, therefore, if the suspenders had resided in a royal burgh, they would have been liable for the tax, it is evident, from the provision of the 1698, c. 20. that they must also be liable for it as persons residing and having change in a burgh of barony which enjoys the communication of trade.

The suspenders would confine the expression, "others who have benefit by trade," in the act 1693, to the retailers of foreign commodities. But there is nothing to warrant this construction; for such retailers derive no more benefit by the communication than craftsmen, or other persons who carry on any sort of manufacture.

Observed on the Bench; Every manufacturer and mechanic derives an obvious benefit from the communication of trade, because it must increase his employment, and therefore he ought to pay his proportion of the tax. With respect to the *quantum*, a discretionary power is in the first instance lodged in the stent-masters and magistrates. If they abuse it (which is not alleged in the

No 27. present action, this Court will give redress. 16th June 1759, Wilson against Magistrates of Glasgow, No 24. p. 13076.

THE LORD ORDINARY had found the letters orderly proceeded.

THE COURT unanimously adhered, and found the suspenders liable in expences.*

Lord Ordinary, *Ankerville.*

For the Suspenders, *Cullen.*

For the Chargers, *G. Fergusson.*

Clerk, *Sir James Colquoun.*

R. D.

Fol. Dic. v. 4. p. 194. Fac. Col. No 119. p. 265.

1794. June 3.

HUGH CRAWFORD and Others *against* JOHN WILSON and Others.

No 28.

The house-holders in a country village are indiscriminately liable to the burden of having soldiers billeted upon them.

BEITH is a country village in the county of Ayr, consisting of nearly 800 inhabitants. Since the year 1787, from thirty to forty soldiers have generally been quartered there, and lately the number was increased to eighty.

After various methods of billeting them had been tried and abandoned, two of the Justices of Peace of the county authorised a committee of the inhabitants to superintend this branch of the police.

John Wilson, the billet-master appointed by them, granted billets on all the inhabitants indiscriminately, schoolmasters, widows, unmarried women, and paupers, excepted.

Hugh Crawford, and others, styling themselves a committee of the private inhabitants, presented a bill of suspension and interdict, praying the the Court to prohibit the billeting of soldiers upon them and their constituents. They admitted, that in cases of transient quarters, or of emergency, this burden must fall on all classes of the inhabitants; but they contended, that in the ordinary case of local quarters, it should be confined to innkeepers and dealers in provisions†; and

Pleaded; At common law, every man is entitled to the exclusive possession of his own house. The billeting of soldiers upon any person except innkeepers, who are obliged to furnish quarters to all the lieges, is a limitation of this privilege introduced by positive statutes, and cannot go beyond their enactment. Now, the only statutable provisions previous to the Union, relating to this subject, are the acts of Convention 1667 and 1678; and the acts of Parliament 1681, c. 3. 1689, c. 32. and 1690, c. 6. 1693, c. 4. 1695, c. 33. and 1698, c. 9. all of which either prohibit free quartering altogether, or allow it only on dealers in liquors or provisions. And the annual mutiny bill declares,

* A similar decision was at the same time given in the case of Gray and others against the Bailie and Stent-Masters of Dalkeith.

† Under this last denomination, they seem to have included "butchers, bakers, candle-makers, grocers, hucksters, and common cow-keepers."