No 40. stented them till now; which sufficiently instructed these acts were not designed to comprehend them, and so were never *in viridi observantia*, but in desuetude *quoad* them, though they had expressed them, as they did not. But in regard the town alleged, that the writers' apprentices, *ipso facto*, by serving their apprenticeships, became burgesses of Glasgow, and got their freedom under that reduplication, as having served writers: THE LORDS thought this might be a ground whereon to make them liable; but, without a present determination of the relevancy, allowed a probation of the custom, before answer; and did not find it sufficient that some of them were made burgesses, unless it were proven that they got it as a right due to them by the production of the discharge of their indentures; and that by the constitution of the burgh, the Magistrates and Dean of Guild could not refuse them, who had served their apprenticeships to writers.

Fol. Dic. v. 1. *p.* 118. *Fountainhall, v.* 1. *p.* 679. & 688.

1696. *November* 24. TOWN of EDINBURGH *against* ALEXANDER BIGGAR.

No 41.
A burgh *feued* out a piece of ground, not within the town, but contained in their charter, being part of the side of a high road leading into the town. The feuer found not liable for the burgal prestations of watching, warding, &c.

IN the mutual declarators betwixt the Town of Edinburgh and Alexander Biggar, brewer, and heritor of the houses called Gairnshall, beyond the Windmill, and built in that mire commonly called the Goosedub; the town craved he might be found liable to all the burgal prestations, as lying within the royalty, such as watching and warding with the neighbours, quartering, assessment, militia, thirlage, &c. Biggar had a declarator of immunity, on this reason, that John Gairns, his author, had got a feu-charter of this ground, from the town, bearing a *reddendo* of 10 merks of feu-duty *pro omni alio onere*, which must free him from watching, warding, out-reeking militia or trained-bands; paying of local, transient, or dry-quarters, within the burgh of Edinburgh or Cannongate; and from all astriction to their mills, or imposition due to them on malt, or any impositions laid on by their authority; and that he is no farther liable to the town but for the yearly feu-duty foresaid.—*Answered* for the town, That the ground whereon these houses stood, was clearly, by their great charter in 1636, a part of the royalty of the burgh, and annexed to the same, and their right bears the *vias et passagia* leading to the said burgh; and where they are too broad, they feu the ground on the sides of their causeways, for melioration and decorement; and its being given in feu, does not hinder its being burgage; for so Thomas Robertson's land in the Meal-market, and the Society, are feus; and yet are liable in watching, warding, and all other burgal prestations.—*Replied*, Though the Magistrates held the town *in burgagio* of the King, so he was the town's superior, and not the Magistrates; yet, where they feu ground without the ports of the burgh, to be holden feu, that cannot be reputed burgage; and the highways and passages given them by their charter, convey no right of

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 purprision: 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. No 41.

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, outreek militia, and other burdens, with the shire.

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

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

No 42.
Suburbs, tho' not subject to the town's jurisdiction, are liabe to quarter soldiers.

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. *Ch. Areskine.* Alt. *W. Grant.* Clerk, *Murray.*

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