

1694. *January 19.*DUKE OF HAMILTON, and The BAILIE of the Town and Regality of Borrowstownness, *against* The TRADES.

No 20.
Who liable
to be stented
in burghs of
regality?

ARNISTON reported the Duke of Hamilton, and the Bailie of the town and regality of Borrowstownness, against the Trades there. The question was, if, upon the new act of Parliament 1693, giving a communication of trade to burghs of regalities, and baronies, according as they should agree with Mr John Buchan, only merchant-traders in export and import are to be stented, or if all the mechanics, such as tailors, shoemakers, &c. must also bear a proportional share in the tax; who *alleged* they were not concerned, seeing they had no benefit by the privilege of trade that was not communicated. *Answered*, It is the foreign trade that makes the place flourish; and if it were not for that resort and concourse of people, these tradesmen would not be employed, nor find encouragement there; and so they must bear a share of the burden, in the same way as tradesmen do in royal burghs. THE LORDS having read the last clause of that act of Parliament, ordaining all traders and others having benefit thereby to be stented, found the word 'others' was not merely exegetick and superfluous, and consequently it could signify none, nor be intended for any but tradesmen, and so found them liable, but not in an equal share with merchants, their concern being less and more remote; but found this would not extend to inhabitants who had no trade, but lived on their own; and that it was not a ground to make them liable, that by the quick return of trade you get things cheaper, that being only an accidental advantage.

Fountainhall, v. 1. p. 594.

1704. *December 13.* LUMISDEN *against* ROBERTSON.

No 21.
Found in conformity
to Elshields
against Elshields,
No 16. p. 13070.

LORD PHILIPHAUGH reported Dame Anna Lumisden, Lady Valleyfield, *contra* Robertson of Gladney, and the Creditors of that estate. The Lady, in her contract of marriage with Preston of Valleyfield, is provided and infeft in an annualrent of 2000 merks out of that estate; but the clause does not express whether this annualrent, or liferent annuity, should be free of cess and other public burdens, or not. The Lady pursuing a poiding of the ground, it was *Objected*, She must bear a proportional share of the cess and other public burdens with the rest of the estate, there being no provision in the contract, specially exeeming her, as uses to be when the same is intended by the parties-contractors; especially considering these annualrents are grievous burdens, and have been the occasion of sinking many estates in Scotland, and, by the 3d. act, Parliament 1646, such liferents were made subject to public burdens; and though that Parliament and its acts be rescinded by the great act rescissory in