

1661, yet the equity of it was so strong, that, by the act of convention in 1667, it is revived, and that clause is carried along in all the subsequent acts of supply in 1672, 1678, 1681, 1685, &c. In the next place, the LORDS have determined accordingly, on the 18th of June 1663, Fleming, No 35. p. 8273.; 22d January 1668, Douglas, No 9. p. 13066.; 22d February 1670, the Countess of Cassilis, No 5. p. 2257.; and 22d July 1691, Ramsay, (*see APPENDIX.*); where such annualrents are made liable to public burdens. *Answered for the Lady,* That it has been always looked upon as undoubted, that these annualrents shall be free, unless there be a clause adjected declaring them liable, which all provident parties do. And the act of the convention 1667 may impose cess, but had no power to make binding laws; and the decisions have been in the case of liferent-localities, which it is not denied but they are liable, and not in the case of annuities as this is; and there is no more reason to make these liable to public burdens, than the annualrents of personal securities by bonds. *2do,* The husband's heir is bound in payment to her as well not infest as infest; and, by a clause of absolute warrandice, is obliged to free her of all perils, burdens, and inconveniencies whatsoever, and the word burdens must comprehend cess. *Replied,* That the decisions are plain, burdening all annualrents, unless the granter be expressly obliged to relieve them; and the clause of warrandice is in the common style, and can only exeem from teind and feu duties, but not from cess. THE LORDS found the Lady's liferent-annuity must bear a share of the public burdens as it shall be proportioned with the rest of the barony, out of which it is upliftable. Some thought this decision might take place where the liferent was exorbitant, and the apparent heir had little; but the LORDS made it general, where it is not declared free.

*Fol. Dic. v. 2. p. 291. Fountainhall, v. 2. p. 246.*

1711. July 13. JAMES Duke of MONTROSE *against* The FEUARS of Kilpatrick.

FIVE chalder and two bolls of meal reserved by King Robert I. in the feu granted by him of the lordship of Kilpatrick, being in King James VI's time made payable to the castle of Dunbarton for the subsistence of the garrison, and called the watch-meal;—in a process for payment thereof, at the Duke of Montrose's interest, (who for onerous causes procured the said feu-duty or watch-meal to be dissolved from the Crown in his favour) against the feuars of Kilpatrick, the LORDS found, That the said watch-meal, being a feu-duty payable out of the Queen's property, was not liable to cess; in respect ever since the Excise was annexed to the Crown, cess is never imposed but by a voluntary offer made by the subjects to the sovereign.

*Fol. Dic. v. 2. p. 291. Forbes, p. 525.*

No 22.

Feu-duty reserved by a Sovereign, in a charter of lands of his property not liable to cess after dissolution thereof from the Crown to a subject.