

1749. July 20.

PURDIE *against* STEIL.

THOMAS PURDIE had been in the use of bringing home his corns after harvest through a ridge of ground belonging to Steil and his authors, after their corns on the said ridge were cut down, and that for the space of 40 years.

This, however, was found not to establish a servitude. In the case of town acres, every one, after the corns are cut down, leads his corn through his neighbour's ground, which, though done for 100 years, will not infer a servitude.

*Fol. Dic. v. 4. p. 279. Kilkerran, p. 517.*

No. 11.

Servitude not implied by 40 years practice of leading corn through a neighbour's stubble.

1761. June 16.

ANDREW WALLACE *against* JOHN MORRISON.

JOHN MORRISON was proprietor of a few acres of ground lying below the town of Stirling, surrounded on the north-east and west by lands belonging to Cowan's hospital, of which the magistrates of Stirling are patrons, and separated from these lands by ditches, which ditches were the property of Mr. Morrison. Above these lands rose a spring of water, which took its rise in the hospital lands, and took its course down one of Mr. Morrison's ditches. Mr. Morrison's authors, from time immemorial, had been in use to stop its course in the ditch, and to make it go into the field, for the use of the field. Mr. Morrison had done the same, and converted it to the use of a tan-work.

Andrew Wallace was proprietor of some ground, and of a tan-work below the property of Mr. Morrison. Being desirous to have the use of this spring, he purchased a grant of the water of it for the use of his tan-work from the magistrates of Stirling; and then brought a declarator against Mr. Morrison, in which he insisted, That the water was now become his property; that it must be allowed to run down Mr. Morrison's ditches in its natural current; and that it could not be diverted from thence into Morrison's field.

Answered: A servitude may be acquired in a spring by immemorial possession; and the defender having been in the immemorial possession of this water, it cannot now be taken from him.

"The Lords assoilzied the defender."

Act. Lockhart, Bruce, Dalrymple.

Adv. Ferguson, Walter Stewart.

Clerk, Gibson.

J. M.

*Fol. Dic. v. 4. p. 279. Fac. Coll. No. 35. p. 70.*

No. 12.

A servitude in a spring of water acquired by possession.