

were once allowed, then other unheard of servitudes might be introduced,—such as that you shall bear a share of the expenses of the floors, and glass windows of your neighbouring tenements, seeing you are benefited thereby. The Lords, by a plurality of six against five, found that this was no servitude, but only a personal obligation on her husband; and therefore assoilzied her from any part of the reparations of the roof, her right making no mention thereof, and there being no universal custom as yet within the burgh for the same. In this cause, the servitude was instanced of all within the thirl to repair the mill, uphold the mill-dam, and to bring home the mill-stones; but that was said to be a general known servitude through all Scotland, whereas this was not.

No. 17.

Fol. Dic. v. 2. p. 373. Fountainhall, v. 2. p. 433.

1732. November 22. INHABITANTS of DUNSE *against* HAY.

No. 18.

THE erection of a town into a burgh of barony, found not to afford the incorporation of burgesses and inhabitants a title to acquire a servitude of pasturage by prescription.

1732, November 24.—But an infeftment of a house, with or without a yard, found a sufficient title to the proprietor to acquire by prescription a servitude of pasturage.

Fol. Dic. v. 2. p. 374. Rem. Dec.

* * See No. 4. p. 1824. *voce* BURGH OF BARONY.

1734. November 27.

GARDEN of BELLAMORE *against* EARL of ABOYNE.

No. 19.

ONE having given by a writ under his hand, liberty and privilege to a neighbouring heritor to cut timber in his woods, for the use of the neighbouring heritor's lands and tenantry, the Lords found this a real servitude, and good with possession against singular successors. See APPENDIX.

Fol. Dic. v. 2. p. 374.

1755. February 18. JAFFRAY *against* DUKE of ROXBURGH.

No. 20.

THE Lords found, that the inhabitants of Kelso had been immemorially in possession of, and had thence acquired a right of servitude of bleaching and drying

No. 20. their linen on the island of Ana. This decision was reversed on appeal, on the ground, that no such servitude was acknowledged by the law of Scotland. See No. 22. *infra*.

Fol. Dic. v. 4. p. 281. Fac. Coll.

* * * This case is No. 69. p. 2340. *voce* CLAUSE.

1759. February 8.

MR. JAMES COCHRAN, Advocate, and others, *against* MR. ADAM FAIRHOLM of Greenhill.

No. 21.

A personal servitude *spatiandi*, not sustained.

The Bruntsfield links, an open piece of pasture ground belonging to the city of Edinburgh, had been used by the inhabitants, for time immemorial, as a field of recreation, where they used to amuse themselves by playing at golf, and in walking. A little bit of the most rugged and useless part of this field was feued out to Mr. Fairholm. He began to inclose it; but was stopped by a complaint exhibited to the sheriff by Mr. Cochran and others, proprietors of houses and yards conterminous to the links, setting forth, That they, their predecessors and authors, had acquired a servitude *spatiandi*, of amusing themselves in this field; that every part of it was subject to this servitude; and that Mr. Fairholm was about to inclose part of this field, and deprive them of their servitude over that part. Such personal servitudes were admitted in the law of England; see Jacob's Law Dictionary, *voce* Prescription, where the servitude of dancing, for recreation, upon another person's ground, is mentioned as sustained. And arguments were used from expediency, and the reasonableness of it.

Pleaded for Fairholm: Personal servitudes are not received into the law of Scotland: There must always be a dominant tenement where there is a servient; Stair, B. 2. T. 7.; Bankton, B. 2. T. 7. § 36.; and in the case of the town of Dunse, No. 4. p. 1824. *voce* BURGH OF BARONY, it was found, that the town could not acquire a rural servitude, as it had neither property in lands nor houses.

Mr. Cochran, finding that the sheriff was disposed to determine against him, advocated the cause to the court of session.

“ The Lords refused the bill.”

Act. *Maclaurin.*

Alt. *Lochart.*

Reporter, Lord *Auchinleck.*

Fol. Dic. v. 4. p. 280. Fac. Coll. No. 164. p. 293.