1775. *December* 20. JOHN BROWN of Glaswell *against* JOHN KINLOCH of Kibrie.

SERVITUDE.

Import of a servitude of casting turf, feal and divot, constituted by possession.

[*Faculty Collection, VI.* 157; *Dictionary,* 14,542.]

ALEMORE. I doubt as to extending the servitude of feal and divot to all who may hereafter possess the ground. What if a village should be erected? Would every inhabitant of a house in the village have as good and ample a right as the tenant now on the ground has? This would be increasing the burden beyond all measure, and beyond possession.

COALSTON. A servitude is for the use of the dominant tenement. It is granted *prædio*, and is so acquired. If the number of houses is increased, so also must the right of using. In a case between *Colonel Dalrymple* and *Bruce of Kennet*, a servitude of a dam and water lead, constituted by usage, for draining a coal, was found to be increased when the coal had occasion for a dam of a greater height.

ALEMORE. *That* respected a service constituted for one particular purpose; but here a new sort of servitude may arise, and servitude of feal and divot for a village instead of a farm.

HAILES. I have some recollection that this question has been agitated in the Court. If this rural tenement should be converted into a village, I do not see how the villagers can have the right which the tenant now has. If the tenant of Bearford's Parks had a servitude of taking stones from a quarry, Can we say that the inhabitants of the New Town of Edinburgh will continue that right in the person of each individual among them?

COVINGTON. Were we to adopt the principle that the servitude must be restricted to its original use, it would greatly reduce the extent of all servitudes in Scotland.

GARDENSTON. The nature of the right is fluctuating. The number of inhabitants may decrease as well as increase.

KAIMES. Upon the supposition of a servitude, constituted by writing, the servitude is acquired to the tenement; but when it is constituted by possession alone, I incline to be of another opinion. There is then a *patientia usus*; the possessor is entitled to continue, not to enlarge possession.

On the 20th December 1775, "The Lords found that the use of the servitude of feal and divot is not to be extended farther than what is sufficient to answer the purpose of those who possess, and have their actual residence upon the ground found entitled to the servitude;" adhering to Lord Coalston's interlocutor.

Act. D. Rae. *Alt.* W. Nairne.

N.B. There was no question put, though there seemed a considerable difference in opinion. The generality of the interlocutor was left to be explained, in case the nature of the farm should be totally changed.

1775. *December* 20. JAMES SKINNER *against* WILLIAM and ANN SKINNER.

LEGITIM.

A son who had received a sum in his father's lifetime, found obliged to collate it.

[*Fac. Coll. VII.* 158; *Dictionary*, 8172.]

COALSTON. Mr Erskine lays down the rules as to collation. This sum was not for education, or an inconsiderable present. I have a good deal of difficulty as to the second point, which is an annuity given by the father, payable to the family of the child.

GARDENSTON. Here was a deed *inter vivos*, and which took effect in the father's lifetime.

HAILES. The L.100 were given by Mr Skinner to his son, not as a stock for setting up in any trade, but merely to equip him, and pay the expense of his passage to the East Indies. I think that this can no more be collated than the money which Mr Skinner certainly gave to his other son, when he equipped him as an officer to the army at the Havannah.

ALEMORE. There is no opportunity here of applying general principles; if there was any thing like a cover used, the rules as to collation might apply. If any thing can be charity, there was an act of charity in the present case, merely to keep his son's wife off the parish: the son can have no benefit from it, for it ceases as soon as he comes home.

COVINGTON. The annuity goes to the wife, and is no provision to the son. As to the first point, though the bond is not payable till the father's death, yet it bears interest, and it is the same thing as if he had borrowed money and given it to the son.

KAIMES. As to the first point, if a man give L.100 to his son, in order to his carrying on business, this may be considered as anticipation, which will impute to the legitim; but that is not the case here: we are able to trace the whole progress of the affair. There was a private bargain between Mr Skinner and his son-in-law; but the fact is, that Mr Skinner gave the money to his son for defraying the expenses of his voyage.

On the 20th December 1775, "The Lords found that the L.100 must be collated, but not the annuity;" altering Lord Elliock's interlocutor as to the *first* point,—adhering as to the *second*.

Act. John Scott. *Alt.* A. Crosbie.

Diss. as to the L.100, Kaimes, Hailes.