

case, the insured will be bound for the premium ; but then the offer must be instantly made.

PRESIDENT. At the time of the bankruptcy no premium was paid. It is for the benefit of all concerned to hold the bargain at an end. Had the premium been actually paid, there would have been more difficulty for them : the contract would so far have been implemented.

On the 28th June 1785, "The Lords assoilyied the defenders ;" adhering to the interlocutor of Lord Eskgrove.

*Act.* A. Campbell. *Alt.* R. Blair.

1785. July 1. MRS AGNES FERGUSON *against* JAMES CHEAP of Strathtyrum, and OTHERS.

#### SERVITUDE

Of pasturage preserved to one part of a barony, notwithstanding the lapse of the years of prescription, by the possession of the other parts.

[*Faculty Collection, IX. 376 ; Dictionary, 14,520.*]

BRAXFIELD. The judgment of the Court, in the case *Moncrieff* against *Balfour*, December 1752, runs counter to the judgment of the Ordinary in this case.

ESK GROVE. In that case there was a question of property as part and pertinent ; a right of servitude once constituted is not lost by a neglect of possessing the whole.

GARDENSTON. I thought it established law, that when there is once a constitution of a right in a barony, the possession of a part saves the whole right.

ROCKVILLE. There would arise this inconveniency from the contrary doctrine, that the proprietor would be prevented from improving his ground, by laying sheep aside. [The only inconveniency would be to deprive the party of a right which he did not think worth preserving.]

On the 1st July 1785, "The Lords found that Agnes Ferguson had a right of pasturage, feal and divot, on the commonty of Leggiemuir."

*Act.* Ilay Campbell. *Alt.* A. Rolland.

*Diss.* Henderland, Braxfield, Hailes, President.