

No 135. Tenants of Borthwick, *vide* SERVITUDE; and in the Town of Perth's case anent the Ise of Staples, (*vide* IBIDEM); and on the 25th of February 1658, Riccart against Linday, (*vide* IBIDEM). The LORDS found this allegation, that he stood infest in Dalvey, with parts and pertinents, and pasturage clad with 40 years possession, relevant, since Dalvey and their sheillings did once both belong to the bishop of Murray, and this contiguity was only relevant against part, and that nothing had been done on that tack. It was urged among the LORDS, that this might prove very dangerous to heritors of grass rooms, or other lands set in tack to neighbouring gentlemen, who possessing 40 years, and abstracting the discharges, and then pretend they possess it as pertinent of there own land; but this may be obviated, by pursuing on the tack, or renewing it on taking contrary discharges, whereas the inconvenience of producing an old latent tack, of which the heritor can have no suspicion, after 60 or 80 years, is more dangerous, if they shall pretend they possess by that tack.

1677. December 6.—THE LORDS having heard the parties farther, *alleging* it was not an ordinary servitude of pasturage, but they build sheillings and a herd stays, from April to September, with their cattle; the LORDS before answer, ordained both parties to adduce witnesses to prove the custom of that country, anent sheillings and grazings, and for clearing deeds of property, and what lands are interjected.

*Fountainhall, MS.*

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1682. January 20. COCKBURN *against* BROWN.

No 136.

THE probation of 40 years possession of pasturage, being made up partly by the natural possession of pasturage, and partly by receiving a small sum yearly in lieu thereof, the LORDS restricted the servitude to that sum, and declared the servient tenement liable thereto in time coming, and not to be liable to actual pasturage.

*Fol. Dic. v. 2. p. 108. Fountainhall.*

This case is No 51. p. 10742.