

1771. *February 7.* GILBERT LAURIE and ROBERT HUNTER *against* The DUKE of HAMILTON.

COMMONTY.

A right of servitude over a Commonty not such an interest as can authorise a division upon the statute 1695, c. 38.

[*Faculty Collect. V. 236; Dictionary, Appendix I.; Commonty, No. 2.*]

AUCHINLECK. This is a *new* claim of the feuars, pretending to a right of having commonties divided between the proprietor and one having a servitude, according to valuation. If they have this right, so also has the proprietor. Hence, if a superior should feu out a house and yard, with the pasturage of so many cows, he might restrict the feuar to a proportion of the common corresponding to the valuation of his house and yard. This would be absurd. The servitude gives a right to pasture, not to plough; and we cannot transform the right, and, by a division, give the servient tenement more than it was originally possessed of or entitled to.

COALSTON. They who have a right of servitude cannot force a division. If there were only a right of casting peats, this would not give a right of division. A servitude of pasturage is a servitude just as a right of casting peats, though more ample. It is true that the proprietor may insist to set aside a certain share of the surface, such as may be sufficient for the use of the servitude; but that is not the shape of the present process.

On the 7th February 1771, "The Lords found that the feuars who have only servitudes cannot pursue a division on the Act 1695."

*Act. W. Nairn. Alt. R. M'Queen.*

*Reporter, J. Clerk.*

1771. *February 14.* CHARLES HOPE WEIR *against* MR ALEXANDER BRUCE.

MEMBER OF PARLIAMENT.

Reduction of a decree of division of valuation, by which a freeholder's qualification was reduced below L.400 Scots, found to be a sufficient ground for striking him off the roll, though he had been upwards of four months enrolled.

(*Faculty Collection, V. 217; Dictionary, 8824.*)

JUSTICE-CLERK. The first objection, that the Court has no jurisdiction by