

ents. But her service now was protected from challenge by the vicennial prescription introduced by the statutes 1494, c. 57, and 1617, c. 13. Besides, this service was supported by the solemn decree of the Court of Session in 1761, upon which it proceeded: And, independently of this, the service ought to be sustained, because the charter taken by William Drummond, her father, in 1724, was a charter of resignation and *confirmation*. It confirmed his previous base infestment, the destination of which was conform to the destination in the marriage-contract; and, upon this right alone, she was entitled to serve heir in special to her father.

After hearing counsel, it was

Ordered and adjudged, that the interlocutors be affirmed.

For the Appellant, *W. Adam, Wm. Honyman.*

For the Respondents, *Sir John Scott, Sir Wm. Grant, J. Anstruther, Chas. Hay.*

1797.

JONES
" LINDSAY, &c.

GEORGE JONES, Proprietor and Manager of the } *Appellant;*
Amphitheatres of Edinburgh and Glasgow, }
MESSRS. LINDSAY & Co., Wood-merchants in } *Respondents.*
Glasgow, }

House of Lords, 17th May 1797.

BUILDING CONTRACT—NON-FULFILMENT.—A written contract for building a circus, to be finished and ready for opening on the 11th November 1792, under a penalty of £500, was entered into:—
Held it not a breach of this contract entitling the party to damages, that the circus was not finished for five or six weeks later than the time stipulated.

This was an action raised before the Magistrates of Glasgow, by the respondents against the appellant for payment of the balance due on a building-contract, for building an amphitheatre in Glasgow, to which the appellant stated the defence of breach of contract, in respect that, by the contract, the respondents had become bound, under a penalty of £500, to finish the said building by the term of Martinmas (11th November 1792). That the same was not completed until Christmas following, while great expense, loss, and damage was thereby occasioned to the appellant, from entering

1797.

 DINGWALL
 v.
 FARQUHARSON.
 Nov. 28, 1794.

into expensive engagements with equestrians and stage performers, upon the faith that the amphitheatre would be ready to be opened at the date stipulated in the contract.

The Sheriff found, “that although it was proved that the respondents were five or six weeks later of finishing the work which they contracted with the defender (appellant), to complete at Martinmas 1792, yet, that he had adduced no proof that the ultimate finishing of the circus was retarded, or that the alleged delay of opening it was owing to the delay of the pursuers in implementing their contract.”

This decree being extracted, a suspension was brought to the Court of Session.

May 21, 1795. The Lord Ordinary refused the bill; and, upon reclaiming petition, the Court adhered. And, on further petition, July 6, — they adhered.
 Feb. 13, 1796.

Against these interlocutors the present appeal was brought.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors be affirmed: And it is farther ordered, that the appellant do pay, or cause to be paid, to the respondents £100 for costs, in respect of the said appeal.

For Appellant, *Wm. Adam, Tho. M. Donald, H. D. Inglis.*
 For Respondents, *Sir J. Scott, Robt. Davidson.*

WM. DINGWALL of Bruckley, Esq. *Appellant;*
 JAMES FARQUHARSON of Inverey, Esq. *Respondent.*

House of Lords, 31st May 1797.

SERVITUDE OF PEAT—SERVITUDE OF ROAD.—(1.) The grant or tolerance of a right to take peat, was so worded as in one clause to apply to fifteen fires, while in the other clauses of the deed, it was conceived so as to mean fifteen families, without respect to the number of fires each family might use; the words fifteen families or fires, being apparently used in the sense that each family was counted as one fire, whether they used one or more fires in their houses. Held, that the grant was not limited to fifteen fires in all, but extended to the fire or fires which each family might use, not exceeding the number of fifteen families.