

1679. *January 23.*DUNLOP *against* The LAIRD of DRUMALZIER.

MR. ALEXANDER DUNLOP being infeft in the vicar-land of Drumalzier, with 48 souns pasturage, to be pastured upon the lands of Drumalzier, pursues a declarator of his right; and that the lands of Drumalzier, out of which this pasturage is, may be soumed, that the possessors thereof may keep no more souns than shall be found their proportion, that by over-souming, the pursuer be not prejudged. The defender alleged, *non relevat*, because albeit it be true, that where divers heritors have a common pasturage in one commonty, no part whereof is ever ploughed, the said common pasturage may be soumed and roumed, that all the souns the whole commonty can hold, may be determined and proportioned to each roum having the common pasturage, according to the holding of that roum;—but here the defender having the right of property, burdened with a definite servitude of pasturage granted by him by paction or prescription; the said servitude cannot be made heavier or more burdensome than it was constituted, by limiting the proprietor of the free use of his property, by ploughing more or less as he pleases, and using his discretion in keeping his own goods on his own ground; for it can never be presumed, but the proprietor will be more careful, not to overstock his own ground, upon his own account, than upon the account of this servitude.

The Lords found that member not relevant.

Fol. Dic. v. 2. p. 374. Stair, v. 2. p. 678.

1680. *January 20.*EARL of SOUTHESK *against* LAIRD of MELGUM.

A SERVITUDE of common pasturage and fuelling hinders not the proprietor to rive out the commonty and labour the same, yet so as whatever lies lea must be liable for the promiscuous pasturage, and the most convenient places for fuel must be designed, exempted for labouring.

Fol. Dic. v. 2. p. 374. Stair.

* * This case is No. 13. p. 7899. *voce* KING'S ADVOCATE.

1751. *February 19.*ALEXANDER ROSS *against* ROSS of Priesthill.

ROSS of Priesthill, proprietor of the lands of Meikle-daan, claimed a servitude of road over the lands of Little-daan, for carrying turf from the muir of Sleeve-kyle, part of the estate of Balnagowan, to his said lands.

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No. 32.

A servitude of pasturage of a certain number of sheep on large muirs, found not to give interest to the heritors or tenants to soum or roum, in order that the ground might not be overstocked.

No. 33.

No. 34.

A servitude of a road was so far restricted, as that an