

* * Colvil reports this case :

No. 42.

THE Laird of Knockdolian warned the tenants of Parthick to flit and remove from the wood of Parthick. It was alleged, That they had the land of Parthick, as rentallers of the Bishop of Glasgow, whereof the wood was a part and pertinent, in so far as they had common pasturage of the wood, and their beasts pastured ay in the wood at their pleasure. It was answered, That they ought not to allége the wood to be part and pertinent of the lands by reason of pasturage, *quia aliud est servitus et jus pascendi, aliud fundus*; and without they would allege themselves to be rentalled in the wood, and the wood haily to be a part and pertinent of the lands, the allegiance ought to be repelled. To this was answered, That as to the wood, and trees of the same, they acclaimed no right to appertain to them; but, as to the servitude, *et jus pecoris pascendi, ita inhæret fundo, et fundum sequitur*, that they could not remove from the wood, except they remove from the same; *nam jus servitutis (aut ait Bartol.) totum est in toto, et totum in qualibet parte totius*; and so, in respect of the said servitude, *pecoris pascendi*, they could not be decerned to remove from the wood. The Lords, after reasoning *in præsentia Regis*, admitted the exception, and found, by interlocutor, in respect of the servitude of pasturage, they might not be decerned to flit and remove from the wood.

Colvil MS. p. 386.

1716. July 28. LD. MELDRUM against FEUERS of OLD MELDRUM.

No. 43.

THE Lords found, That parties whose charters carried them to the privilege of digging stones in the quarry of a commony belonging to the superior and his tenants, had thereby also right to cast feal and divot, and to pasture there, they proving that they were in use so to do, though within the years of prescription.

Fol. Dic. v. 2. p. 375. Bruce.

* * This case is No. 291. p. 12152. voce PROCESS.

1748. June 8. SIR GEORGE STEWART of Grandtully against MACKENZIE.

No. 44.

THE muir of Thorn belongs partly in property to Sir George Stewart, subject to the servitude of pasturage to John Mackenzie of Delvin's adjacent lands of Bridieston, and partly in property to Mackenzie, subject to the like servitude of pasturage to Sir George's adjacent lands of Arntully and others; and the limits of these several properties are known and distinct, so that there was no part of the muir common property.

Where a party has the property, and another a servitude of pasturage, is a division competent?