# COMMONTY.

1738. *November* 24.
ANDREW TENNENT in Handaxwood *against* MURRAY.

No. 1.

BY contract betwixt four heritors concerning a commonty in 1663, they divided a part of it, and agreed that the rest of it should remain commonty, each party to hold their proportional number and quantity of grazing soums thereupon yearly as follows, viz. 24 soums to Muirhouse dykes, 20 to a second, 20 to a third, and 24 to the fourth. The heritor of one of these parts pursued a division of the remaining common. The first question was, if it was competent after the contract. *2dly*, If it was competent, what was the rule of the division? The rule in the act 1695, or the proportion of soums in the contract. The Lord Ordinary found the process of division competent, but that the rule of division was in proportion to the number of soums that each party had right to in the common, by the contract 1663; and the Lords twice adhered without answers, though some differed. (See DICT. No. 4. p. 2466.)

1739. *February* 1. EARL of WIGTON and CARNWATH *against* FEUARS.

No. 2.

A VASSAL, upon a charter of lands with parts and pertinents, possessing a commonty of the Barony, by pasturing and casting fuel and divot for 40 years, in the same way as the Baron himself possessed; and it was incapable of any other sort of possession; the Lords found that the vassal's interest in the commonty was not only a servitude, but a common property; for the 40 years possession was considered not so much as giving him a right in the commonty, as an evidence that an interest in the commonty was intended to be conveyed by the general clause of part and pertinent; which interest, at the first constitution of the feu, when the superior was full proprietor, could not be a servitude. (See DICT. No. 5. p. 2467 and No. 6. p. 2468.)