

1773. June 17.

WILLIAM PORTEOUS, and Others, Storemasters in the Parishes of Douglas, Lesmahago, and Muirkirk, *against* JOSEPH ALLAN of Castlebrocket, and ALEXANDER MORTON of Chappel.

No. 13.

The right of a drove-road for the passage of sheep to, and from an annual fair, may be acquired by prescription.

THE lands of Castlebrocket, belonging to the said Joseph Allan, and the lands of Bonnayhill and Chappel, belonging to the said Alexander Morton, are situate in the parish of Avendale, and shire of Lanark, and lie contiguous.

The town of Kilbride, where a sheep fair is held yearly in the month of June, is situate some miles northward of these lands; and the parishes of Douglas, Muirkirk, and Lesmahago, lie at a considerable distance to the southward of them.

In June, 1764, a petition was presented to the sheriff-substitute of Lanark, in the name of William Porteous, and seventeen other persons, storemasters in the parishes of Douglas, Lesmahago, and Muirkirk, setting forth, that they, and their predecessors, had been in the usage of a drove-road to Kilbryde fair, therein described, for a hundred years past; and praying a proof thereof and an interdict in the mean time.

Various steps of procedure followed upon this application. The cause being afterwards removed into this Court by advocacy, the Lord Ordinary having allowed a proof before answer, in July, 1768, pronounced an interlocutor, which, after some procedure, was confirmed by the Court.

“ Find it proved, that the pursuers, the said William Porteous, and others, storemasters and tenants in the parishes of Lesmahago, Douglas, and Muirkirk, have acquired, by prescription, the right of a drove-road for the passage of their sheep from their lands, lying in the said parishes, to the annual fair held at Kilbryde, and from the said sheep fair to the said lands: And find, that the said drove-road passes through the defender’s, Joseph Allan and Alexander Morton, their grounds,” in a line particularly described. “ And find the defenders liable to the pursuers in the expense of extracting the decret.”

The defenders, in a reclaiming petition, not only disputed the sufficiency of the proof as to possession, but farther contended, that, on the footing of a claim by prescription to a prædial servitude, which this must be, that the pursuers have no title to insist in the action, referring to the decisions; Town of Dunse *contra* Drummelzier, No. 4. p. 1824. *voce* BURGH OF BARONY; Jeffrey and others *contra* the Duke of Roxburgh, reversed upon an appeal by the Duke, No. 69. p. 2340. *voce* CLAUSE; and February 8th, 1759, Cochrane and others *contra* Fairholm, Sect. 2. *infra*.

The petition was refused without answers.

Act. R. Sinclair, W. Craig.

Alt. Wight, Rolland.

Clerk, Ross.

Fal. Dic. v. 4. p. 279. Fac. Coll. No. 70. p. 170.