

1779. February 10.

COLONEL JAMES SINCLAIR *against* The MAGISTRATES and TOWN-COUNCIL of
DYSART.

THE inhabitants of Dysart had been in the immemorial use of bleaching their linen on a spot of ground situate within Letham-park. In an action brought by Colonel Sinclair, proprietor of this park, against the Magistrates and Town Council of Dysart, the pursuer, *inter alia*, insisted, that the inhabitants were not entitled to make this use of the park, and

Pleaded: The corporation has no right, either from its charter, or other titles, to the property of this ground, or to any servitude over it.

The right of bleaching on the grounds of another, as it is not a servitude known in law, cannot be acquired by mere possession. This was expressly found in the case of Carmichael *contra* the Town of Falkland, No. 160. p. 10916. *voce* PRESCRIPTION; and by a judgment of the house of Lords reversing a judgment of this court, where the right of bleaching had been sustained upon a prescriptive possession; Ninian Jeffray *against* the Duke of Roxburgh, No. 69. p. 2340. *voce* CLAUSE.

Answered for the defenders: It is of no consequence that the town's charters do not make any special mention of this green. These charters give the corporation a right to the territory of the town, including houses and lands, unlimited by precise boundaries; and, therefore, this green having been immemorially possessed by the inhabitants, must be held as part of the town's property.

But supposing the right of property were vested in the pursuer, immemorial usage has established a servitude of bleaching on this spot of ground in favour of the town. Though law-books take notice of particular servitudes which occur most frequently under known names, they do not say that no other servitude can be legally constituted.— Servitudes are as various as there are lawful uses which one man may make of another's property; Voet, L. 8. T. 3. § 12. Stair, B. 2. L. 7. § 5. Bleaching is certainly a lawful use of lands; and therefore, the privilege of bleaching on the grounds of another, may be acquired by every method known in law for acquiring servitudes.

The court found, "That the town of Dysart, as a body corporate, could, for the use of the burgesses, and other inhabitants, acquired by purchase, or by immemorial usage and prescription, the servitude here contended for, in its full extent, of water from said wells, for family-use, washing, drying, and bleaching their clothes and linens; and that the corporation, for behoof of its burgesses and its inhabitants, have, by immemorial usage and prescription, acquired a servitude, or privilege of taking water from said two wells, both for family-uses and for washing their clothes and linens, and of drying and bleaching the same upon the said green."

Lord Ordinary, Covington. Act. Crosbie. Alt. Hlay Campbell. Clerk, Menzies.

Fol. Dic. v. 4. p. 281. Fac. Coll. No. 68. p. 128.

* * * This case was appealed. The House of Lords, 8th March, 1780, ORDERED,
That the interlocutor complained of be affirmed.

No. 22.

A servitude of the liberty to bleach clothes on a certain spot sustained, in opposition to Jaffray *contra* Roxburgh, *supra*.