

No 141. foot of that green brae and the rock in the sea; and therefore, that the Duke had right to build the wall of the inclosure upon the said rock, but with such steps over the wall within the *littus maris* as will allow a passage for walking on foot upon the *littus maris*, for public use allenarly; and decerned and declared the Duke's right and property in these serms, according to this and the former interlocutor, February 19th last.

*Fol. Dic. v. 2. p. 108. Forbes, p. 675.*

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S E C T. XI.

What Title requisite to the Prescription of annual Duties and Prescriptions?

1621. November 15.

TOWN of LINLITHGOW *against* the FLESHERS of EDINBURGH.

No 142.

A town found to have no right by possession without a special grant, to custom for bestial passing through the street.

IN the suspension pursued at the instance of the Town of Linlithgow *contra* the Fleshers of Edinburgh, for suspending of the charges raised by the fleshers upon the decret of the burghs, in their convention; by the which decret, the town of Linlithgow was ordained to desist from taking of any custom from the fleshers for their goods, driving, and passing, either by their town, within their liberties, or through the town itself; which was impugned by the town of Linlithgow, upon this reason, that they had a charter granted by the King, of their liberties, customs, and of small customs expressly, and which was shortly ratified in Parliament, and that, conform thereto, they had been in continual possession of taking of two pennies for ilk ox, cow, or horse, and four penies for ilk ten sheep that were driven either through their town, or by their town, within their liberties, albeit the samen was neither bought, nor sold, nor brought to their market; the LORDS found, That the town of Linlithgow had no right to uplift such customs, and that such customs and consuetudes ought not to be authorized, seeing all the King's lieges have liberty to drive their goods through the King's public way and streets, without any exaction of that nature, except it had been granted for a public good of the realm, such as bridges, or such like common works.

Act. Nicolson.

Act. Hope.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 109. Durie, p. 3.*