

## SERVITUDE.

## SECT. I.

## Right of Servitude, how established.

1622. January 26. TURNBULL *against* L. BLANERNE.

TURNBULL pursuing the L. Blanerne to remove from certain lands, he alleged, That he ought not to remove from such a particular privilege of pasturage and winning of fail in the commony of the said lands, because the pursuer's right proceeded from one Atchison, which Atchison, his author, in the contract of alienation, whereby Atchison first acquired right to the lands, reserved the privilege foresaid to the L. Blanerne and his heirs heritably, and so the said servitude behoved to affect the land. It was replied, That the pursuer, being singular successor, and no such condition being either in his own right, or his author's charter or sasine, but only alleged to be in a clause of the contract, it could not affect the ground, specially against the singular successor; and the most that the excipient could benefit himself, was by his recourse of warrandice against that party, and his heirs, granters of that privilege; neither could that privilege defend the excipient, he having no real right to the land by virtue thereof, not being infest nor seised, and not being of that quality which, without charter or sasine, could be transmitted in the person of the defender, and his heirs and successors heritably. The Lords found the allegiance relevant, albeit the defender had no sasine, seeing it was a servitude, which being inserted in the contract which was the ground of the pursuer's author's charter and heritable right, it affected the ground thereof, in whose hands soever the right of the land came; and therefore they decerned the defender to remove from the land, with reservation, and without prejudice of the liberty of the privilege and servitude above-mentioned to be retained and bruked by him.

No. 1.  
Consent, with possession, without sasine, found sufficient to constitute a servitude.

Alt. Lawrie.

Fol. Dic. v. 2. p. 372. Durie, p. 11.