

- No 13. vassals, or friends and neighbours to great persons, and that such a qualification of service could not be sustained to interrupt More's right of property and make him a tenant, unless there were a tack or rental produced, bearing, that riding was a part of the duty or service.

Gosford, MS. No 154. p. 61.

## No 14.

A separate tenement may become part and pertinent of another tenement by long possession.

1671. November 17.

YOUNG against CARMICHAEL.

WALTER YOUNG having appraised a piece of waste ground in the west side of Mary King's closs, and being therein infest, pursues William Carmichael to remove therefrom, who *alleged* absolutor, because he stood infest in a tenement on the east side of the closs, over against the waste ground in question, with parts and pertinents, and possessed the waste ground as part and pertinents of his tenement the space of 40 years, and thereby prescribed a right thereto. It was *answered*, That no prescription can take place by possession, without a title; but the defender's infestment could be no title for possessing this waste ground; *first*, Because it was *separatum tenementum*, bruiked by a several infestment competent to the pursuer's author, from whom he had appraised and produced his predecessor's infestment *in anno 1556*; *2do*, The defender's infestment is bounded, and bears his tenement to lie upon the east side of King's closs, and so can be no title to possess this waste ground lying upon the west side of the closs. It was *answered*, That there being no infestment of the waste ground since the year 1556, it might become part and pertinent by long possession;—"Which the LORDS found relevant, but withal found that the defender's infestment being bounded, as said is, could be no title for the prescription of this waste ground lying without the bounding."

Fol. Dic. v. 2. p. 26. Stair, v. 2. p. 3.

1675. February 20.

COUNTESS of MORAY against WEMYSS.

## No 15.

Found in conformity with the above.

THE Countess of Moray pursued Mr Robert Wemyss to remove from two pieces of land, the one called Harroneas land, the other called Alexander's land. It was *alleged* for the defender, Absolutor, because he bruiked these lands as part and pertinent of his lands of Cuthil Hill by the space of 40 years, and so not only hath the benefit of a possessory judgment, but an absolute right by prescription. The pursuer *answered*, That the Earl of Moray was infest in these pieces of land *per expressum*, as severall tenements, and so could not be pertinent of any other land, and produceth his charter, together with a tack set by the Earl of Moray *in anno 1606* to Wemyss, then heritor of Cuthil Hill, for 19 years, expresly bearing the same designation, so that the defender's author having attained possession by a tack, his possession was the Earl of