

A second reclaiming petition having been preferred, and followed with answers, was also refused. No. 14.

Lord Ordinary, Hailes. For Mr. Gray. Solicitor-General, A. Campbell.

Alt. Lord Advocate, Dean of Faculty, Hay. Clerk, Home.

S. Fol. Dic. v. 4. p. 280. Fac. Coll. No. 202. p. 424.

SECT. II.

Difference between Servitudes and Personal Rights.—Servitude implies a proper Dominant Tenement.—Servitude to a Barony.

1682. *March.*

Mr. ANDREW WILSON *against* WAUGH and WHITE.

No. 15.

THE Laird of Ardross having built a church at the Ely, and localled a stipend to it upon several parts of his lands by a private mortification, which was quarrelled by a singular successor, after the minister had been above 40 years in possession;

The Lords found, That the mortification not being made by appointment of the commission, nor secured by infeftment, it could not affect the defender's lands, but in proportion with the whole ancient barony; to which the defender condescended, (though not obliged for any part in strict law) the lands not being disposed to him with any such burden. And the mortification being constituted by way of grant, obliging the mortifier and his heirs, &c. and not by a real right, the Lords would not sustain it as real by possession like a servitude.

Fol. Dic. v. 2. p. 373. Harcarse, (INEFFMENT) No. 590. p. 164.

1686. *January.* PETER *against* LADY ECCLES.

No. 16.

FOUND, That a bond of thirlage to a person's mill, for payment only of outsucken multure, being clothed with possession, was a real servitude against the granter and his singular successors.

Fol. Dic. v. 2. p. 373. Harcarse, (SERVITUDE) No. 850. p. 242.