

No. 38.
tend the dam
till it touched
firm ground.

his dam to be any longer, or to encroach upon his ground more than formerly; but the most he can require is, that the defender permit him to make up the breach made in his dam, the pursuer satisfying the damage the defender hath sustained through the sanding of his ground upon occasion of the said dam.

The Lords found the declarator relevant, that this dam had been 40 years, or immemorially, fixed to the defender's ground, to give him right to such a servitude upon the defender's ground, and that he was not liable for any damage occurring by speats, or any other accidents, without his fault, but that he might extend his dam till it touched the defender's ground, in such a way as might be least prejudicial to the defender; and appointed commissioners to visit the ground, and set the place where the dam should be fixed.

Fol. Dic. v. 2. p. 375. Stair, p. 545.

* * * Fountainhall reports this case :

GAIRLTON pursues a declarator, that he has right to repair his dam-head and mills. Alleged, it is on Stevenston's ground turned in by the speat of water. The Lords ordained before answer a visitation, albeit Gairlton offered to prove the place he intended to repair is the same where the dam-head had stood before, and that the nature of that servitude of a dam-head implied a liberty to alter the place when necessary, being without the defender's prejudice.

1683, *March 14.*—BETWEEN Sir John Seaton of Garmilton, and Sir Robert Sinclair of Stevenston, “The Lords found Garmilton could have no other servitude on Stevenston's land for his mill-dam, save what he has been in possession of; and assoilzied Stevenston from damages.”

1683, *March 30.*—BETWEEN Garmilton and Stevenston.—“The Lords after the interlocutor of the 14th current, and found Stevenston liable to refund and make up Garmilton's damage, that the water ran not towards his mill as it was wont to do. Though all the servitude which Stevenston owed him in law was only a *nuda patientia* through his ground, and that the channel of the water was diverted *casu* and by speat, without any fact or deed on Stevenston's part, and could not be returned to the former channel.

Fountainhall MS. and. v. 1. p. 225, 231.

1748. *June 16.* DUGUID *against* FARQUHARSON.

No. 39.

An heritor reserving a moss, but disposing the grass, it was found, That he could only use the grass when his horses were employed in loading and carrying of peats, or with the horses that were necessarily used to carry victuals to the work people when employed in digging and casting the peats. See APPENDIX.

Fol. Dic. v. 4. p. 281.