

1752. July 3.

ALEXANDER BRODIE of Brodie, Esq; *against* SIR ROBERT GORDON of Gordonstoun, Bart.

## No 3.

The act of Parliament prohibiting possessors of land, under 10 chalders of victual, to erect dove-cotes, implies no restriction as to the number of dove-cotes upon those who possess more than 10 chalders.

SIR ROBERT GORDON is possessed of lands in the parish of Kinnedar, to the yearly amount of 60 chalders of victual; on this estate he has three dove-cotes, and began lately to erect a fourth, not two miles distant from the others, and near the boundary which divides his estate from Brodie's. Brodie obtained letters of suspension of this new building; and *pleaded*, That the act 19th Parl. 22. Ja. VI. provides, *1mo*, That no person be permitted to build a dove-cote who has not at least lands to the yearly amount of ten chalders of victual within two miles of it; and, *2do*, That no person, although having lands to the amount of ten chalders, be permitted to build two dove-cotes within two miles of each other; and therefore concluded, from the state of the case, that Sir Robert Gordon had no right to proceed in building the projected dove-cote.

*Answered* for Sir Robert Gordon; 'The statute provides that no person, having less than ten chalders in yearly rent, be permitted to build a dove-cote; and that he who has ten chalders be permitted to build one only; but it has introduced no limitations with respect to him who possesses more than ten chalders in yearly rent; neither do the words in the statute, *within the bounds aforesaid*, imply that one dove-cote only may be erected within the space of two miles, but that one dove-cote only may be erected within the limits of that ground, whose yearly rent extends to ten chalders.

'THE LORDS repelled the reasons of suspension.'

Reporter, *Elchies*. Act. *Hamilton-Gordon*. Alt. *R. Dundas*. Clerk, *Pringle*.  
*Fol. Dic. v. 3. p. 185. Fac. Col. No 23. p. 43.*

\*.\* Kilkerran reports the same case :

BRODIE obtained suspension of the building of a pigeon-house, after Sir Robert Gordon had made a considerable advance in it.

At discussing, the question turned upon the construction of the act 19th Parl. 22. Ja. VI. which declares, 'That no person shall have power, liberty, or privilege, to build a dove-cote upon any lands within this realm, except that the person, builder of the dove-cote, have lands and teinds pertaining to him, extending in yearly rent to ten chalders of victual, next adjacent to the said dove-cote, at the least, lying within two miles of the same; and that it shall no ways be lawful to the person forsooth, worth in yearly rent the foresaid ten chalder victual, to build more dove-cotes upon and within the bounds foresaid, except one dove-cote only.'

It was for Brodie averred, in point of fact, That the parish of Kinnedar belonged wholly to Sir Robert and him : That Sir Robert's yearly rent in it was about 60 chalders of victual, and Brodie's about 30 : That there is a large muir, about half a mile long, belonging to Sir Robert, which lies between Sir Robert's corn-lands and Brodie's lands, which bears the best grain in the county ; and that the place chosen by Sir Robert, for building this pigeon-house, was the extremity of this barren muir next to Brodie's lands, with an apparent intention, that the pigeons should be maintained wholly upon Brodie's corn-fields, as the pigeons had a full half mile of a barren muir to fly over before they could touch Sir Robert's corn-fields ; which therefore he was well entitled to oppose so far as law could support him : He therefore *contended*, That Sir Robert was not entitled by law to build this dovecote, as he already had three dovecotes upon his estate in that parish, all within less than two miles of the place where the fourth was now a-building, which is the very thing that the act of Parliament forbids, when first it declares it unlawful for one to build a dovecote who has not ten chalder of victual within two miles of the place where it is built, and then adds, that no man having ten chalder of victual shall build more than one within the bounds foresaid.

It was, on the other hand, *argued* for Sir Robert, That as the evil intended to be remedied was that of persons of small substance building dovecotes, whereby other men's grounds were opprest, when the law fixes ten chalders of victual as the qualification, it supposes the land, out of which that rent is paid, to be sufficient to maintain the pigeons : That, at the same time, it wisely declares, that there should be only one dovecote upon the lands producing ten chalders victual ; but there is nothing in the statute limiting a man, who may have 60 chalders yearly rent, to have but one dovecote : For, what could have been more absurd, than that ten heritors, of ten chalders victual each, should be entitled to ten pigeon-houses among them, and that yet an heritor of 100 chalders should be only entitled to one.

The letters were found orderly proceeded.

THE LORDS were of opinion, that an heritor had liberty to build a pigeon-house for every ten chalders of yearly rent : Though some thought the suspender's construction of the act to be more agreeable to the words, and even to the spirit of the act ; as the words, *bounds foresaid*, did more properly apply to the two miles, than to the extent of the ground producing ten chalders of victual, which had not been described by any bounds ; and that, according to what is now found, an heritor of 60 chalders of victual may have six dovecotes within the bounds of half a mile, close to the march of another heritor's ground.

*Kilkerran, (DOVECOTE) No 1. p. 168.*

*See Murray against Turnbull and Russel, 19th January 1797, voce JURISDICTION.*

*See Procurator-Fiscal of East Lothian against Smeaton, voce JURISDICTION.*

*See APPENDIX.*