

No 12.

*2do*, A barony is an union of distinct tenements and rights for jurisdiction, and other purposes, and, no doubt, comprehends the whole parts and pertinents, whether of property or servitude, which belonged to the several tenements before their erection; but a barony being only *nomen dignitatis et jurisdictionis*, cannot be constructed as a *fundus* or principal tenement, to which a servitude or other pertinent can properly belong. Servitudes, and other pertinents, belong to, and are *correlate* to the particular tenements which compose the barony, but not to the right of barony itself, which is only a *nomen juris*, to which no such servitude or pertinent can belong. And if the common in question should be set off to the heritor of Strathmiglo, in proportion to the valuation of the whole barony, the consequence would be, that the heritor would be entitled to a share in the division effeiring to his fishings, superiorities, mulctures, and others, which all enter into the valuation of the barony; and this, at first sight, appears absurd, seeing none of these are subjects to which a right of commonty or servitude can, in any sense, belong.

'THE LORDS found, that the heritor of the barony of Strathmiglo was entitled to a share in the division of this commonty, effeiring to the valued rent of the lands of Demperston only.'

Reporter, *Lord Elchies*. Act. R. *Craigie*. Alt. R. *Dundas*. Clerk, *Justice*.  
M. Fol. Dic. v. 3. p. 138. Fac. Col. No 47. p. 70.

1757. November 23.

ROBERT BALFOUR of Balbirny, and others *against* MRS ISABEL DOUGLAS of Kirkness.

No 13.  
In the division of a commonty, the possession by part of a barony, found to preserve the right of the whole barony.

THE predecessors of Mr Isabel Douglas of Kirkness were infeft in the barony of Kirkness and pertinents; and they and their tenants had been in use, past memory of man, to pasture upon the commonty of Boglochty: but, for forty years past, the possessors of two of the farms of the barony had neglected to pasture any cattle upon it, owing to some alterations in the improvement of those farms by the proprietors.

Robert Balfour-Ramsay of Balbirny, and others, were infeft in lands adjoining to the bog of Boglochty, with a privilege of common pasturage in that bog; and they, and all their tenants, had been in use, both in old and late times, to pasture their cattle upon it.

In a division of this commonty, brought by Robert Balfour-Ramsay and others, against Mrs Isabel Douglas, the pursuers insisted, That Mrs Douglas had right to a share in the division of the commonty, not in proportion to her valued rent of the whole barony of Kirkness, but in proportion to those parts of it which had, for above forty years, been in use to pasture upon the commonty.

*Answered* for Mrs Douglas, it appears from the proof, that, of old, the whole farms of the barony possessed this common, whereby their common property in it was established equally with that of the pursuers: and though some of the farms, by being inclosed, had no occasion, for many years past, to send their cattle to the common; yet the possession that has been had is sufficient to preserve the right of common property once established in the proprietor of the barony.

No 13.

'THE LORDS found, That the defender has right to a share in the division of the commonty, in proportion to her valued rent of the whole barony of Kirkness.'

Act. *Advocatus, Lockhart.*

Alt. *And. Pringle, Ferguson.*

J. D.

*Fol. Dic. v. 3. p. 138. Fac. Col. No 62. p. 100.*

1764. *November 15.*

TRUSTEES of Bonshaw *against* The DUKE of QUEENSBERRY.

No 14.

AGREEABLY to the spirit of the statute for dividing commonities, a limestone quarry, like a moss, ought to remain undivided.

*Sel. Dec. No 225. p. 289.*

1768. *July 30.*

ROBERT JOHNSTON, JAMES BEVERIDGE, and JOHN GIBB *against* The DUKE of HAMILTON.

THE barony of Kerse, including the muirs of Reddingrig and Whitesiderig, belonged antiently to the abbacy of Holyroodhouse. Prior to 1552, several farms of this barony had been feued out by the abbacy, with part and pertinent. In that year, the remainder were feued to the family of Hamilton, who having afterwards acquired the superiority, again feued out some of them, likewise with part and pertinent.

Robert Johnston, and others, held their rights in this way, partly derived from the abbacy, partly from the family of Hamilton. In a process of division of those muirs at their instance, it appeared, that the possessors of their lands had immemorially pastured their cattle, and cast feal and divot upon the muirs: And that the Duke, besides possessing in the same way by his tenants, had wrought coal in the commonty. The question came to be, Whether the pursuers had a right of servitude or common property?

It was *pleaded* for the Duke, That he is proprietor of these muirs, except in as far as his right is limited by those of the pursuers. What was conveyed to them as part and pertinent can only be known from their possession; and, as

No 15.  
Possession of an uncultivated commonty by pasturage and casting feal and divot, upon a title of part and pertinent, infers a right of common property.