

No. 20. their linen on the island of Ana. This decision was reversed on appeal, on the ground, that no such servitude was acknowledged by the law of Scotland. See No. 22. *infra*.

Fol. Dic. v. 4. p. 281. Fac. Coll.

* * * This case is No. 69. p. 2340. *voce* CLAUSE.

1759. February 8.

MR. JAMES COCHRAN, Advocate, and others, *against* MR. ADAM FAIRHOLM of Greenhill.

No. 21.

A personal servitude *spatiandi*, not sustained.

The Bruntsfield links, an open piece of pasture ground belonging to the city of Edinburgh, had been used by the inhabitants, for time immemorial, as a field of recreation, where they used to amuse themselves by playing at golf, and in walking. A little bit of the most rugged and useless part of this field was feued out to Mr. Fairholm. He began to inclose it; but was stopped by a complaint exhibited to the sheriff by Mr. Cochran and others, proprietors of houses and yards conterminous to the links, setting forth, That they, their predecessors and authors, had acquired a servitude *spatiandi*, of amusing themselves in this field; that every part of it was subject to this servitude; and that Mr. Fairholm was about to inclose part of this field, and deprive them of their servitude over that part. Such personal servitudes were admitted in the law of England; see Jacob's Law Dictionary, *voce* Prescription, where the servitude of dancing, for recreation, upon another person's ground, is mentioned as sustained. And arguments were used from expediency, and the reasonableness of it.

Pleaded for Fairholm: Personal servitudes are not received into the law of Scotland: There must always be a dominant tenement where there is a servient; Stair, B. 2. T. 7.; Bankton, B. 2. T. 7. § 36.; and in the case of the town of Dunse, No. 4. p. 1824. *voce* BURGH OF BARONY, it was found, that the town could not acquire a rural servitude, as it had neither property in lands nor houses.

Mr. Cochran, finding that the sheriff was disposed to determine against him, advocated the cause to the court of session.

“ The Lords refused the bill.”

Act. *Maclaurin.*

Alt *Lochart.*

Reporter, Lord *Auchinleck.*

Fol. Dic. v. 4. p. 280. Fac. Coll. No. 164. p. 293.