

Judgment *affirmed*—subject to alteration as above. July 27, 1814.

Agent for Appellants, SPOTTISWOODE and ROBERTSON.
Agent for Respondent, CHALMER.

LAND-TAX OF
ENTAILED ES-
TATES.—PUR-
CHASER.
Judgment.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

FRASER—*Appellant*.

CHISHOLM—*Respondent*.

WHERE a claim to a right of common on the high grounds, in the Highlands, depends on usage and possession, it must be a very strong and clear case of usage that can support the claim, as trespasses may be so very easily committed. July 27, 1814.

HIGHLAND
BOUNDARIES.

THIS was another question as to highland boundaries, arising upon an action in the Court of Session, to have the Appellant's (Fraser, of Lovat) exclusive right, in virtue of his title to the barony of Beanly, declared to certain lands upon which, as he contended, the Respondents, to whom or their predecessors certain parts of that barony had been feued at different times, had improperly encroached, on the ground that the lands in dispute were common property. After much difference of opinion, and contradictory interlocutors, the Court below decided in favour of the Respondents, and Fraser appealed.

Vide ante,
Seaforth v.
Hume, 338.

The ground on which the Respondents alleged

July 27, 1814. *HIGHLAND BOUNDARIES.* that these lands were common property was that of prescriptive usage and enjoyment. It appeared in evidence however that this usage had been much interrupted, and that the Lovat family had long kept a grass-keeper on the lands to maintain the exclusive possession, though leave had been given by them to others at times to put their cattle on the places in dispute.

Observations
in judgment.

Lord Redesdale. In these vast wilds trespasses were very easily committed, and with great difficulty restrained. The boundary marks were tops of mountains, cairns, huge stones, &c. It must therefore be a strong case of usage which could give a right where there was no written evidence to warrant the claim. Their Lordships, in judging as to the usage and possession, had to consider whether it was an assertion of the right or a mere trespass. In looking through the evidence the Appellant's usage was of a description clearly asserting an exclusive right. The evidence for the Respondents was simply that of having used the lands for their cattle, that usage having been interrupted, and therefore not the foundation of a prescriptive right. The possession by *bothies*, and on the whole the weight of the evidence, was with Fraser.

Lord Eldon (Chancellor.) He concurred in that opinion.

Judgment.

Judgment of the Court below (in effect) *reversed*.

Agents for Appellant, CAMPBELL.

Agent for Respondent, _____.