

his Feud do not pass by a Disposition of the Lands as Pertinents there, but are movable to all Intents and Purposes 4 Decemb. 1630 Lady Westmorland contra Lady Hume 20 January 1692 Purchase contra Brown & Decem. 1628 Laugson contra Lady Boghall and must continue with the Tenant till the Feud be run out, *domi die inter eadem.*

Growing Corns are not carried as Parts and Pertinents by a Disposition of the Lands on which they grow Craig Feud. Lib. 2. Tit. 2. 23. The *tanquam fundi instrumentum* Craig Feud.

One having a bounding Charter cannot prescribe a Right to any Thing without the Boundary as Part and Pertinent of the Land contained therein 17 Novemb. 1671 Young contra Carmichael. But Prescription may affect what is within the Boundary, to another's detriment as Part and Pertinent thereof: Which Prescription may not be elided by the other's possessing the major Part of that Tenement Stair Lib. 2. Tit. 3. 8. 26.

Controversies about what is Part and Pertinent of Marches of Land which by the Civil Law were regulated by *actio finium regundorum* are within determined either possession by a simple Act of Notification, or in petitions upon a Summons of Molestation containing a Declarator of Property, or upon a Brief of Perambulation.

Possession clears the Parts and Pertinents of every unbounded & non-movable. And where in a competition any ground is claimed as Part and Pertinent of several Tenements, Commission is granted to visit the ground, and Witnesses are allowed to either Party for proving the Possession and Interruptions 9 July 1630 L. Rowallan contra Boyd. Yea even where the controverted ground is claimed by one conform to an express Infeftment, and by another as Part and Pertinent of Lands contained in his own Infeftment if both Infeftments flow as original Rights from one common Author both will be allowed to prove Possession and Interruption by Witnesses. But in pari casu, the express Infeftment is preferred Stair Feud. That is one expressly Infeft in Lands will be preferred in petition to a Person claiming them as Part and Pertinent of his own Lands, not Infefted as such for the space of 40 years: Tho' Seven Years Possession as Part and Pertinent will be good till Reduction Stair Feud. 8. If neither Party be Infeft in the Land in Question, Interruption by either will not exclude Prescription in favour of the other: And therefore where both have had mutual or promiscuous Possession, each possessing what he could and turning off the other, what is so possessed continues a promiscuous Community Stair Feud. 40 Years possession uninterrupted of Land as Part and Pertinent of that expressed in the Possessor's Infeftment,

is relevant to declare the Property to belong to him in a competition with me, especially Infeft in the said Land 22 Feb. 1711 L. v. contra Finlay. Altho' before that time the Land so possessed has been a distinct Tenement 20 Feb. 1675 C. of Murray contra Weir's. *Possessor enim semper jus in est sua sunt pertinentia.* And any Man might procure upon Resignation of his own Lands, Infeftment in a neighbouring Heritor's ground under a new and special Name. But in a Declarator of Community of a Muir, the Parties having founded upon a late Charter and Deeds of his Lands with their Parts and Pertinents, and offered to prove that the Community of the Muir in Question was always a Part of these Lands and possessed at such time out of Mine: No Protest was sustained at his Instance, unless he could produce a Proofs 40 Years back, as a Warrant of his Author's Opinion 2 July 1714 Dundee contra Simons of Dun and Leth. Altho' it was alleged for the Pursuer that the standing possession of the undoubted Property of the Lands by Virtue of the Charter and Deeds produced his Author's presumptions were in evidence to have had the same Right which was a title sufficient for their possession, as his Infeftment is for his estate but will be refused. He did not in the present Question pretend to have acquired Right by Prescription of a separate Tenement, in which case he should have sustained his petition to produce a prior title: He pleads only the Community of that Muir as Part and Pertinent of his Lands which are and have been in title and unquestioned Property, and alleges Prescription only as a Proof, not as a Title of Prescription.

Art. 4.

Several Powers inherent by consequence in the Right of Property, tho' not expressly therein.

A Vassal hath not only Right to what the dispositive Clause intitles him to: but also to several Powers inherent by consequence in the Right of Property; as to dispose of the Subject disposed ratably or in ratably, or to burden it with Services, set Feuds thereof, put in and remove Tenants according to Law of all which there will be occasion to treat in the proper Places.

Where a River runs thro' the Lands of several Heritors, any of the Heritors may dispose of it at Pleasure, by damming up or otherwise for his own Use provided, the natural course be not diverted so as to hinder the Water to turn into the former Channel, when it comes to the Bounds of the Heritors of the Lands below, unless that Heritor of the Lands below have a Service of a free Water-gang thro' the superior Lands *Jus contra Ripam of Eldrig. Because opus aliqnd in suo faciente noverim non potest nunciari l. 2. ff. de op. noul nunc* Therefore an Heritor was allowed to build a Dam upon a River for gathering the