

S E C T. X.

*Servitus Iineris.*1623. *June 27.* NEILSON *against* SHERIFF OF GALLOWAY.

No 138.
 Prescription
 of a road to
 the kirk
 through a
 corn field not
 sustained
 without a
 title, unless
 upon posses-
 sion past me-
 mory of man.

IN an action pursued by Gilbert Neilson against the Sheriff of Galloway, to hear and see it found and declared, that the pursuer was in use, and his predecessors, of a gate and passage through the defender's lands unto his parish church, by the space of 30 years without interruption, and that whether the said defender's land, through which the said pursuer had his said possession, was laboured for corns, or lay lee for hay or grass, by the which way they were in use to pass from their own house to the church, as well on horse as on foot; and therefore the defender to be decerned to desist from troubling of the pursuer, and his men and tenants, in any time to come, or compelling of them to go or come to and from the church otherways than conform to their bypast use of possession; the Lords sustained the action, founded upon the foresaid use and possession uninterrupted, to infer and constitute a servitude, albeit there was no writ nor other ground libelled to qualify the grant of any servitude by the defender, or his predecessors, to the pursuer, or his predecessors, except only the possession uninterrupted; but the Lords found, that the possession ought to be proven to be immemorial and past memory of man, and would not sustain the offer to prove possession for 30 or 40 years.

Act. *Per se & Hope.*Alt. *M'Gill.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 108. Durie, p. 67.*

* * * Haddington reports this case :

IN the action pursued by Gilbert Neilson of Kirkcaffie against the Sheriff of Galloway, for permitting him to continue his gate from his house to the parish kirk through the Sheriff's corn land, according to his possession, the Lords, finding no title libelled but possession, would not sustain the summons, unless he would libel possession past memory of man.

*Haddington, MS. No 2872.*1673. *June 20.*The LAIRD OF FARDELL *against* Mr ROBERT WEMYSS of Cutlehill.

No 139.
 Found in con-
 formity with
 the above.

IN a declarator pursued at Fardell's instance for having the liberty of a passage and highway for carrying of coals from the coal-hill to the port of Aber-