

HEREZELD.

1766. *March* . SMITH *against* SUTHERLAND.

In a process of spuilie and damages, Isobel Smith, widow of a tenant in Caithness, against Captain James Sutherland, factor on the estate of Mey; this question occurred, how far herezelds were at all lawful; for the fact was, that, under that pretence, Captain Sutherland had carried off a horse from Isobel Smith's farm. It was allowed that they were in practice formerly, but it was contended that they were not now.

The authorities in the information for Captain Sutherland cited for the herezeld were,—*Qu. Att. c. 23*; Skene, *voce* Herezelder; Craig, *L. 2, tit. 8, § 32*, and *L. 2, tit. 9, § 38*; Balfour, p. 199; Stair, *B. II, tit. 3, § 80*; Bank., Vol. II. p. 146, § 69; Ersk., *B. II. tit. 6, § 10*; Dict., *voce* Herezeld; and it was proved, in sundry instances, that they were still in use to be granted in that country.

In the information for the widow, the legality of herezelds in general was faintly disputed; but it was alleged, that no herezeld is due, except by a tenant. In this case, Isobel Smith's husband was a cottar; and for this, reference was made to *Qu. Att. c. 23*; Balfour, p. 199; and Dict. *voce* Herezeld. Further, it was pleaded, that a herezeld, when paid, secured the tenant's representatives in another year's possession after the tenant's death: and for this was cited, Craig, *L. 2, tit. 8, § 32*, and *tit. 9, § 38*; Dict., *voce* Herezeld; Stair, *B. II. tit. 3, § 80*; Bankton, Vol. II. p. 104; Erskine, *B. II. tit. 6, § 10*.

Whereas in this case, notwithstanding the exaction of the herezeld, Captain Sutherland had turned her out.

The Lord Ordinary, (27th June 1774,) found, that, in this case, no herezeld was due; but the Lords avoided saying any thing in direct terms concerning the herezeld; and, (March 1776,) found, "That, in this case, Captain Sutherland did improperly take possession of the pursuer's horse; and that thereby, and being otherways interpellled by him, she was hindered from labouring her farm; therefore, that he was liable in damages."

1763. *November 16.* BELL of BLACKETHOUSE *against* DUKE of QUEENSBERRY.

BELL of Blackethouse held lands of the Duke of Queensberry: in the *redendo* was a clause, that the vassal should pay *optimum equum pro herezeldo*. Bell sold the lands in three parcels, and the purchaser of the largest parcel took his charter from the Duke, with the clause *pro herezeldo*; the second purchaser, however, refused to allow it to enter into his charter, in respect one herezeld only was due for the whole.

"The Lords, 16th November 1763, sisted process till the other two purchasers were brought into the field."

A herezeld is not a casualty incident to a feudal holding ; it was originally due only in the case of a tenant at will dying in possession of a farm ; and, by acceptance of it, the master is bound to continue the widow and children of the tenant deceased in possession of the farm, for another year, on the same terms.

HIGHWAYS.

1770. November 23. *MUIRHEAD, &c. against SPOTTISWOOD of DUNNIPACE.*

SPOTTISWOOD of *Dunnipace* having, by authority of the Justices of Peace of the county of *Stirling*, instead of an old road, very bad and inconvenient in many respects, which he shut up, made and opened a new road, in which alteration the country not only acquiesced, but many of the heritors greatly approved :—In a reduction of this decret and order of the Justices, as turning about the road more than 200 ells, and being *ultra vires* of the Justices, the Lords, (23d November 1770,) found, “ That, by the long acquiescence and repeated acts of homologation on the part of the pursuers, they are barred from the reduction ; therefore repelled the reasons of reduction, and assoilyied the defender, and found expenses due.”

See also the case of *Archbishop of York, &c. against Haldane*, in which the Lords pronounced a similar interlocutor.

In the case of *Spottiswood*, it was maintained, that kirk-roads do not fall under the jurisdiction of the Justices. The proceedings of the Justices were known in the 1758. The reduction was brought 1767.

HOMOLOGATION.

IN a case, January 1686, *Erskine*, observed in the *Dict.*, Vol. I. p. 382, the Lords found, That one upon death-bed having executed a bond of provision to his younger children, payment by the heir to some of the children was a homologation as to the rest.

The like judgment was given, *Steel against Steel*, decided in January 1774.