piscium condendi et indolia solitos committendi; were found not to have Right to the Service and sole Privilege of being Fishers Mactalers Sallers and Packers of Fish upon an adjacent Water: altho the Heretor of the Fishing and his Tacksmen had employed them that Way in regular Bonds, and given them a certain Proportion of Fish in Wages according to the Number taken for the Space of 40 Years. 14 March 1707 Creditors and Donatary of Dunfermling contra Lynnes. Partly for that this was an extraordinary Service deboarding from the common Rules, and resolving in a temporary or personal Locatio operarum; and tho the Charter gave them the Privilege of Fishers Mactalers Curers and Packers, it did not give them an exclusive Power to hinder others to do the like. Partly for that the Heretors making use of them to fish the Water was only a mere facultas, like a Man's going in a common Road or to another's Mill, or making use of Shearers out of his Neighbours Ground &c. for 40 Years, which doth not hinder him to alter his Course at his Leisure thereafter. 2. Possession that establishes Prescription of a Service is accounted from Deeds of the Master of the Land or Tenement to which the Service is due. But negative Services, as that of altius non tollendi &c. never prescribe without a preceding Title. And Prescription therefore begins to run from the Time that Liberty in that Matter was Discharged. Bart. Corp. de Servit. urb. praed. lap. 50. N. 2. Carpzov Jurisprud. Forens. Part 2. const. 4. Def. 13. 28 Jun. 1688 Wilks contra Scot. Because in Order to prescribe a Service by Length of Time some Fact of the Person who claims it is required, which can be no other in the negative Service, which is a mere facultas, than a negative Prohibition to the Person who owes it to use his Freedom.

Services are acquired expressly by Writ. A complete Title to Real or Predial Services is acquired by Writ, with either Possession or Infeftment. [redacted]. For the Title of such a Service neither perfected by Possession nor Infeftment, is of no Effect against singular Successors, but only against the Granter & his Heirs. Stair Ibid. §. 5. Mackenz. Inst. Lib. 2. Tit. 9. §. 11. The recording a Service in the Register of Reversions would not supply the Want of Possession; there being no Warrant for such a Registration. Stewart Answers to Dirlet. Tit. Jack. But a Service, tho discontinued as the Leading of Sea Ware, which is done only at a certain Time of the Year, if published and intimated upon the Ground, will hold good against a singular Successor. Stewart Ibid. Tit. Servitude. A negative Service, altius non tollendi was found constituted even by a personal Clause in a Disposition of a House. 28 June 1666 Wilkie contra Scot. A Service of Pasturage and winning of Fail reserved to a Seller of Lands and his Heirs in the Contract of Alienation, was found to affect the said Lands in the Person of a singular Successor, tho not contained in his own Right or in his Author's Charter or Seisin; in Respect it was a Service insert in the Contract which was the Ground of the present Heretor's Charter and heretable Right. 26 January 1622 Turnbull contra L. Blanerne. An Obligation to

to grant a Service is equivalent to a formal Disposition or Grant: As Obligations to assign, discharge, renounce &c. are equivalent to Assignations, Discharges, Renunciations &c. formally made. Because these and the like Rights require no essential Solemnity. Stair Ibid. But personal Services of Liferents are of no Force without Infeftment against singular Successors: But Tacks clothed with Possession will defend the Tenant against any Purchaser. An absolute and perpetual Right of Service can be established only by the Proprietor: Services constituted by Vassals upon their Property, have no Effect against the Superior who did not consent thereto. Craig Feud. Lib. 2. Tit. 8. §. 24. Vers. Presumitur and Tit. 11. §. 13. That is the Heir a Service will be good and effectual so long as the Vassal or his Successors enjoy the Fee; yet if the Fee return to the Superior by Recognition or otherwise, he needs not pass the Service. But Services acquired by Prescription are effectual against the Superior as against Successors acquired by Prescription, except upon Interruption of January 1665 Earl of Cassillis contra Dunsmore. Albeit a Vassal cannot subject his Lands to a Service without the Superior's Consent; yet he may acquire a Service to his own Land without it, which the Superior Craig Ibid. Because he be entitled to make the Superior make the Fee. Tho the Superior may defeat and improve the Tenant or Heretor in Case he may defeat and improve the Tenant or Heretor constitute a real Service to last longer than their temporary Rights: or these may commence & continue the Course of Prescription. Stair Ibid.

A Right of Service comprehends the Means without which it cannot be used: As the Service of drawing Water out of a Well implies a Right of Passage to the Well. L. 3. §. ult. ff. de Serv. praed. rust. L. 20. §. 1. ff. de Serv. praed. urb. L. 3. §. pen. ff. de aqu. quot. & estiv. L. 40. §. 1. ff. de act. empt. L. 6. ff. de servit.

Services come to cease either expressly by a Discharge or Renunciation thereof. L. 14. §. 1. ff. de Servit. or tacitly. Services cease tacitly 1. By Confusion or Consolidation, when one Person becomes absolute Proprietor of both the Land or Tenement that served and that for which the Service was established. L. 3. ff. quand. servit. amitt. L. 30. ff. de Serv. praed. urb. For a Service is a Right upon the Estate of another Person; and the Right which one has over his own Estate, that is intirely at his own Disposal, is not called a Service. If the Confusion is incurred by an absolute Right of Property, the Alienation thereof doth not make the Service revive. L. 30. ff. Voet Comm. ad ff. Lib. 8. Tit. 6. N. 3. Because he who disponed the servient Tenement, disponed it for ad Right Title or Interest &c. v. g. If there be a Service of Pasturage due to me out of neighbouring Lands, my purchasing these Lands would no Doubt extinguish the Service, which would not revive upon my selling the Lands again, unless it be so provided and expressly reserved. Stewart Answers to Dirlet. Doubts Tit. Common Appendant. An Heretor of Land having acquired a Right