Right of Annualrent due out of the same, the Annualrent so extinguished would not revive by the Heretor's disponing the Property of the Land, unless it were expressly reserved Stewart Ibid. Tit. Extinction of Rights. But if the Confusion is inferred by a temporary Right of Property, the Service revives after ceasing of that Right l. 4. §. 1. ff. de fund. dot. l. 18. ff. de servit. l. 73. ff. de Senat. trebel. Jo. Voet Ibid. For Instance, if an Heretor of a Mill having a Service upon a neighbouring Ground, thro which his Mill Lead or Sequel must run acquire that Ground, and thereafter dispone it, the Service of the Sequel would not thereby cease unless expressly discharged: For it cannot be supposed, that the Heretor of the Mill by disponing the predium servient, intended to destroy his own Mill. And an Annualrent out of Land being purchased by the Heretor, if his Right of Property should be reduced, the Right of Annualrent would still remain Stewart Ibid. & Tit. Servitude and Annualrent. §. 2. A Service expires, whenever the Land or Tenement subject to it happens to perish l. 14. ff. quemad. serv. amitt. But if the Tenement be again restored to its former State and Condition the Service if it be a real one revives l. 20. §. 2. ff. de serv. praed. urb. l. 34. §. 1. & l. 35. ff. de serv. praed. rust. The a personal Service would not so revive l. 5. §. 2. l. 30. §. 1. ff. quib. mod. usufr. amitt. The Reason of the Difference is, because real and not personal, Services are of their proper Nature perpetual Jo. Voet Ibid. N. 4. yet if the Subject of a personal Service is not quite extinct but only the Use of the Service interrupted for a Time, the Service revives after the Impediment is removed l. 26. pr. l. 31. ff. de usufr. l. 5. §. ult. l. 7. l. 23. l. 24. l. 26. ff. quib. mod. usufr. vel us. amitt. Nor doth the intervening of so much Time without the Extinction and Restitution of the Servitude remedient as might infer Prescription of Immunity, hinder the Service to revive l. 14. Reg. l. 18. §. ult. ff. quemad. serv. amitt. Because the Person having Right thereto was not valens uti, during the Interval Reg. l. 35. ff. de serv. praed. rust. But Service is lost by tolerating something to be done in the Land or Tenement subject to it that is inconsistent with such a Service.

4 Freedom from a Service may be acquired by Prescription, or 40 Years Forbearance to use it. The Civil Law distinguishes betwixt rural and City Services, allowing the former to expire simply non utendo l. 18 ff. de serv. praed. rust. In the Space of 10 Years inter presentes and 20 inter absentes l. pen. C. de serv. and requiring further to the Extinction of the Latter a positive counteracting the Use thereof by the Proprietor of the servient Tenement l. 18. §. 2. quemad. serv. amitt. l. 6. ff. de serv. praed. urb. The Reason of the Difference assigned by Lawyers, is because the Use of rural Services doth consist in the Deeds of those to whom they are due: Whereas City Services consist solely in the Patience and Acquiescence of such as are liable to them. But as this Reason doth not equally hold in all our Services, and the Course of Prescription with us

us is longer than that of the Civil Law: So neither do we own such a Difference betwixt rural and city Services, but sustain the naked Forbearance of the Use of any Service for the Space of 40 Years, as a sufficient Extinction thereof; whether the interested Party was absent or present, even tho the Service was constituted by Writ, since the Write itself prescribes if not made use of for so long Time, Stair L. 2. Tit. 7. §. 4. The Service of Ofter ad sepulchrum doth not expire non utendo l. 4. ff. quemad. serv. amitt. Because there is no occasion of using it except in the uncertain Event of Mortality. A Service altius non tollendi constitute only by a personal Clause in the Disposition of a House was found not prescribed by a Singular Rule for having subsisted that Rule for the Space of more than 40 Years by Infeftments not mentioning the Service; the not having attempted to build higher than was allowed 20 June 1680 Wilkie contra Scot. Because a negative Service which consisted in a being meeting in a mere passive resultate did not prescribe but from the Time that the Heretor of the House subject to the Service exercised Acts of Freedom without Interruption from the Heretor of the House to which the Service is due. According to the Civil Law if a Service by the Constitutor of it is not to be used continually, but only alternatly every other Year or Month or Week, or Day 20. it doth not prescribe till expiring of the Double of the ordinary Time l. 7. l. quemad. serv. amitt. And a Right of Warrant so constituted doth not prescribe at all l. 28. ff. quib. mod. usufr. amitt. But this is no Place in our Law.

By the Roman Law an Obligation to grant a Right of Service of Lands personal Action for that End l. 3. pr. ff. de oblig. et act. Services actually acquired are made effectual by the possessory Remedies of interdicta de itinere actuque privato, and uti possidetis, and the petitory actio confessoria; and Services unjustly claimed, as Due are declared null by the petitory actio negatoria. Actio confessoria is a real Action properly one craves a Right of Service upon another's Property to be declared in Favour of himself or his Tenement §. 2. Inst. de Action. v. g. a Right to cast Peats in another's Moss due to the Pursuer's Lands. Which Action is called confessoria, perhaps because the Defender therein is made to confess that his Property is under Service. Actio negatoria, is that whereby a Person insists for asserting and declaring his House or Land to be free of Service §. 2. Inst. de Act. v. g. Not to be liable to the Service of casting Peats. We have also possessory and petitory Actions about Services in our Law.

A possessory Action lies upon 7 Years peaceable and uninterrupted Possession of a Service for continuing the same till such Time as a declarator of Exemption is obtained. And where there hath been no Possession, or not so long Possession, actio confessoria, or a Declarator of Services is competent. The Tenor whereof may run thus. Our Will is, and we charge you, that ye lawfully summon B. Heretor Wadsetter Liferenter or Possessor of the Lands of S. Which Lands are burdened with the Services underwritten, to compear &c. to answer at the Instance of A. as having Right to the Service of &c. as Part and Pertinent of the Lands of E. belonging to the Pursuer and his Predecessors and