

and Authors by continual possession and Use of the said Servitude as a Per-  
 tinent to their said Land, and to the Behoof thereof as the dominant Tenement  
 by frequent and ordinary Use and Possession, as they had Occasion  
 in past Memory; at least during the Space of 40 Years; at least as having  
 Right to the said Servitude by Bond of Servitude or Disposition thereof  
 from the Heritor of the said Tenement for the Time which Bond or  
 Disposition is dated &c. By Virtue of the said Pursuer his Predecessors or Authors  
 have been in Possession or Use of the said Servitude. It is to say the  
 said Defender to hear and see it found and declared, that the said Pursuer  
 hath good and undoubted Right to the said Servitude in Manner underwrit-  
 ten; And the said Defender to be decreed by Decree of the said Lords to  
 desist and cease from troubling him in the peaceable Enjoyment of the  
 said Servitude; and to pay and satisfy him the Damages sustained thro'  
 his unjust hindring his Enjoyment thereof, and thro' his detaining the pro-  
 fit of the said Servitude as shall be modified by Decrees of the said Lords  
 conform to the Laws and daily Practice of this Realm &c. According to  
 Justice &c. The Doctors conclude in the Libel of this Action, that the De-  
 fender should find sufficient caution not to molest or disturb the Complainer  
 and to reimburse him his Expenses in case of Disturbance. But we observe  
 that by raising Laborious when there is Need for it. This is a relevant De-  
 fence in this Action, that the Right of the Service flows a non habente  
 potestate in so far as he who constituted the same was never in seignior  
 the Tenement alleged to be under Service, or was divested in Favour of  
 the Defender or his Predecessor or Authors before Constitution of the Service  
 or before any Possession followed upon it. The Pursuer may reply upon the  
 instrument the Title of the Constituter of the Service, and that the Service was  
 clothed with Possession before he was divested. Stat. Lib. 4. Tit. 17. §. 6.  
 or he may found upon Prescription. To take of which Allegiance the De-  
 fender must prove Interruption. Frequent and ordinary using and exercising  
 the Service, is understood to be a continued Possession. One Years simple  
 Forbearance to possess, will not infer Interruption, unless Instruments were  
 taken upon it, or that there was actual Debarring in the Case Stat. Lib. 4. §. 7.

The not claiming or using a Service for the Space of 7 Years is the Founda-  
 tion of a possessory Judgment to a Proprietor, or Liferenter, for excluding  
 such a Service till it be declared. And when 7 Years Immunity cannot be  
 pretended, actio negatoria, or a Declarator of Freedom and Exemption  
 from the Service may be raised. But this Action is seldom commenced with it  
 because Use, which is all the Possession in the Case of Services, may be stop-  
 ped upon any Doubt concerning the Point of Right, without incurring the  
 Hazard of Ejection or Infrusion: Which puts the Pursuer to an Action for vin-  
 dicating the same. yet such a Declarator is convenient and necessary, for secur-  
 ing against another's Pretence of Service upon the Account of long Posses-  
 sion, or an insufficient Title fortified with Prescription; when perhaps the  
 Proof of Interruption failed thro' the Death of Persons that might be produc-  
 ed to witness it. Stat. Lib. 4. §. 5. The Libel of this Declarator being a Negative

and only the Denial of a Service, it proves itself, unless the contrary be  
 made appear. Sometimes the Libel doth not deny the Service altogether, but  
 only that it is not due in the Way and Manner that the Defender claims and  
 uses it. l. 4. §. 1. ff. de Servit. l. 11. pr. ff. quemad. Serv. amitt. l. 14. ff. si serv.  
 vind.

## Chap. 2.

### Of the several Kinds of Services.

There may be so many different Sorts of Services as there are Ways of  
 abridging any Person of the free Use of his Property. For Liberty and  
 Service are Contraries, where destructio unius est generalis alterius. But  
 these are commonly divided into Real and Preial, and Personal Services.

#### Tit. 1.

#### Of Real or Preial Services.

A Real or Preial Service, is a Burden a fettering one. Namis Land  
 or Tenement for the Use of another directly, and in Consequence for the  
 Master's Behoof as having Right to such Land or Tenement. Because  
 which the Service doth pass to him. This Service can be exercised only for the  
 Use of the dominant Tenement. l. 5. §. 1. l. 6. pr. & §. 1. ff. de serv. praed. rust.  
 and but of that Part of it in Favour of which the Service was granted. l. 24. ff.  
 ad. l. 12. C. de serv. & aqu. unless it be otherwise ordered by express Action  
 l. 33. §. 1. ff. de serv. praed. rust. l. 2. ff. de riv. Such Services are called real,  
 because they are inseparable from Lands or Tenements, and cannot belong  
 to one who has no Land or Tenement. l. 1. §. 1. ff. commun. praed. And a Right  
 of this Nature of a real Service, as to go to another Man's ground to walk there,  
 may be acquired by Contract in one who has no Land. See Stat. Lib. 4.  
 part. 1. Tit. 1. Sect. 1. §. 3.

Real Services are distinguished into Rural, and City Services.

#### Sect. 1.

#### Of Rural Services.

Rural Services, or those of Lands in the Country are 1. The Right of a  
 passage 2. Aqueduct. 3. Common Pasturage. 4. Fuelling. 5. Thirlage.  
 The Right of Passage from one Place to another, either for a Man on  
 Foot or on Horseback, or for a Beast loaded, or for a Wagon. Which is called  
 a private Way, for that it leads from or to some private Place, in Opposition  
 to the publick Way made for publick Use called the Kings high Way, which  
 leads from one Burgh or Port or other publick Place to another, and is patent  
 to