

to all Persons having Freedom of Traffick. A Service of a Way or Passage thro' ones Ground, is understood to be ^{always} one Way as most convenient for the Owner of the dominant Tenement, who cannot alter the Way he hath once chosen: For such a Service doth not import a Liberty to make as many Ways as can be. If a Service naturally necessary be refused by one Neighbour to another as when there is no going to the Ground of the one without passing thro' the other's: the Judge will oblige the Proprietor of the said Ground to grant a Passage to the other thro' the Place that is least inconvenient, allowing him a suitable Recompence for his Loss l. 12. ff. de relig. for natural Equity demands that a Ground should not remain altogether useless Les Lex in viles de Tom. 1. Part. 1. Liv. 1. Tit. 2. Sect. 13. §. 4. Tit. 12. Sect. 5. §. 10.

2. Aqueduct is a Right to convey Water from one Ground to another either in Pipes under Ground, or by a Rivulet above Ground, termed also a Watercourse, Watergang or a Draught of Water v. g. to make a Mill go there. For the Course of Water cannot be altered without a Service, or Consent of the Proprietor thro' whose Ground it had formerly run, tho' he hath no other Dominion by the Diversion than his Want of the Pleasure of the Water v. hinc 1624 Bonnaline contra Cranston Hop. Mag. Prall. Tit. de act. in faultibus die contra L. Bonehouses.

3. Common Pasturage. Called in England common of Pasture is a Right to feed Cattle on another's Ground either in common with the Proprietor or in common with others excluding him. Which is established either for a definite or indefinite Number of Souns or Yokes of Cattle and doth not hinder the Proprietor to till and open the Ground for other Ends of Property as to win Coal or Stone, unless he be restrained by Custom or Consent: But only so much as remains grass, may be used for Pasture by the Inhabitants of the Land to which the Service is due. Thus a Service of Pasturage and ^{scouring} was not sustained to hinder the Proprietor of the Ground to favour so much thereof as he pleased, yet so as whatever may See be liable to the common Pasturage, and the most convenient Places designed for fuel without any Pasturage, and not laboured, 20 January 1600 & Southack contra L. Nelyum and others. Com. mon Pasturage is acquired ordinarily by a Clause in a Charter and sometimes by a personal Obligation clothed with Possession which is effectual against singular Successors 26 January 1622 Turnble contra ^{Blair} ^{Blair}. A Clause of common Pasturage generally conceived in a Charter hath no further Effect than as other common Clauses, to carry Right to Pasturage belonging to the Fee if any be. But if clothed with 40 Years Possession it intitles to Pasture upon any Ground belonging to the Superior, which he at his granting the Charter might have affected with such a Service. Hain Tit. 2. Tit. 7. §. 19. Thus a Clause in an ^{ancient} ^{ancient} Lords Charter of his Lands cum communi pastura in general, and

and 40 Years Possession of Pasturage in a certain Mire was found sufficient to establish a Right of common Pasturage to him in that Mire, with another Heretofore having a Clause in the Charter of his Lands cum communi pastura in the Mire in Question per expremum 14. Novemb. 1652. Hooper contra Lairds of Brighty & Balbirnie. Nay, long Possession may introduce a Right of Pasturage upon Ground not belonging to the Superior Grantor of the Charter. Albeit the Charter in Favour of the Possessor do not dispense Lands with common Pasturage expressly, but with Part and Portinent Stair Feid. Because Pasturage is ius in re et in rem servitium, that the one is inseparable from the other. So Part and Portinent of Lands disposed of a Minute was found to extend to common Pasturage in a Mire possessed as Portinent of the said Lands and the Disposition extended upon the Minute retained near expressly common Pasturage in the said Mire. Albeit it was pleaded for the Seller, that it was sufficient for him to dispose his Lands with Part and Portiments common to the Minute, reserved to the Buyer to use the Rights so far as it could reach as Records in respect of a Minute ^{see} brought to be considered in small Form, a prescription particularly at Right it can carry to divide any Tract of Plea in which the Seller and Purchaser 14 Feb. 1652. Parkwick contra Parkwick. Albeit common Pasturage be established indefinitely, without expressing the Number of Cattle allowed to be grazed on the common, it can reach no further than to a proportionable Number according to the Rent of the Land to which the Service is due that is so many as it can hold at Fodder in Winter. Even so the Pasturage held never so long been promiscuously used, by putting any Number of Beasts thereon at Pleasure. Such an arbitrary Power of overcharging the common, cannot be acquired by Prescription, as being contrary to the Nature of the Service, and tending if not restrained to render it unprofitable to all. The overcharging a Common is prevented by Scouring and Rounding (called in England ad mensuratio pastura Ad mensuramentum of Pasture) that is, by determining how many Souns the Ground subject to the Service will conveniently pasture, and stinting the Inhabitants of every Room of the Land which hath Right to the Service to a particular Number of these Souns according to their Proportion. We are not to understand by Scouring and Rounding what Sir George Mackenzie (Justi. Lib. 2. Tit. 9. §. 15.) seems to insinuate, an Assignment of particular Rooms upon the servient Tenement to the Cattle of the dominant Tenement. For the servient Tenement is scoured and the dominant Tenement rounded. That is, it is determined how many Souns the Ground subject to the Service will conveniently pasture, and the Inhabitants of every Room of the Land which