

which hath Right to the Service are restricted to so many Souns accord-
 =ing to their Proportion. No Person concerned in common Pasturage,
 can oblige the rest to divide the service. Tenement and assign every one
 share thereof for pasturing his cattle: Seeing thereby some of them
 might be put under a Disadvantage, v. g. When a common Muir is
 inclosed with a Dyke, all having Right to common Pasturage there
 might put in their cattle without any Herd at all: Whereas were it
 a Muir divided, and particular Rooms or Parts thereof allotted to parti-
 cular Persons, every one behoved to have a Herd to keep his Beasts
 from ranging upon his Neighbour's Room; and the Interest of each
 in such a Community would not bear the Expence of a Herd, especially
 where the Property burdened with common Pasturage is veiled in a
 =nether to whom any Coal or Stone found there doth belong and not to the
 who have Right of common Pasturage. But where the full Property of
 the ground is common, such a Community may be divided among the Propri-
 etors, and after Division every one may kill, and use all sorts of Properties
 upon his Part. *Stair Feud. 9. 17. Veis.* It is a Custom, albeit where diverse
 Herdors have a common Pasturage upon ground whereof the Pro-
 perty belongs to none of them in particular, there may be summing and
 =quitting, i. e. all the Souns the whole Community can take may be deter-
 =mined and proportioned to each Room having common Pasturage, ac-
 =cording to the Holdings of such Rooms: Yet the Land of a particular
 Herdor, wherein others have a Right to pasture in common with him,
 =it cannot be sought by these to be summed for limiting the free Use
 of his Property by keeping as many cattle upon his own ground as he
 =thinks fit. 23 January 1679. *Dunlop contra L. Drumelzier.* Seeing it can-
 =not be presumed he will be left careful not to overstock, or overcharge his
 own ground, upon Account of the Service. In England a Person is implead-
 =ed for overstocking or overburdening a Common with his cattle, upon a writ
 =called *Superoneratione Pasturee*. Common Pasturage in our Law doth
 =ordinarily comprehend all the lesser Services, such as the casting of Faël and
 =Dyot. *Craig Feud. Lib. 2. tit. 8. 3 & 20. Stair Feud. 9. 13.* Which presump-
 =tive Right to the lesser Services may be taken off by contrary Custom or ex-
 =press Paction. So common Pasturage will not infer a Service of Faël and
 =Dyot, if he who possessed the former was interrupted in casting the Faël and
 =Dyot. 15 Feb. 1678. *L. Kaining contra Town of Edkirk.* For common
 =Pasturage upon ground is a separate Interest from the breaking it for Faël
 =and Dyot; and the one may be possessed without the other.

4. *Fuelling*, is a Right of casting Faël and Dyot, i. e. of digging Peats
 and Turves on, and pulling Fleather from, another Man's ground, for the
 Use of the Inhabitants of the Land to which the Service is due. This is called
 in England *Turbary*, from *turba* an obsolete Latin Word for a Turf.
 Such

Such a Service implies a Way to bring off the Fuel tho' not expressed,
 and is regulated by Consent or Custom. It is sometimes constituted indifferently
 upon a whole Muir or Muir and sometimes upon a particular Place
 thereof. In some Places a Cart Way, in others a Load Way for carrying
 this Fuel. A Service of casting Faël and Dyot Clay and Stone indefinitely
 in a Muir, was found not to hinder the Proprietor of the Muir to plough
 and rise out a Part thereof, leaving what was unquestionably sufficient
 for the Use of the Service; with this Quality, that if the reserved Part
 proved insufficient at any Time, a part of that which was labour'd
 should be left Lee for the same purpose. 21 June 1667. *Waltton contra*
 =*Ficars of Dunkennan* 20 January 1668. *E. Southesk contra L. Mel-*
 =*gam* and others which is otherwise both respect to the publick Utility, by
 =making large Muirs profitable. Albeit a Service affects uninquan-
 =quation of the predominant services. This Service it to be applied only to the
 =Use of the dominant Tenement, and to no other. *Stair Feud. 13. in fin.* with-
 =out an established Custom or Prescription which overrides all. *Kad Pratt.*
 =25 June 1655. *L. Monimusk contra L. Tilgodela.*

5. *Thirlage* (answering to what they term in England *scotage*
 =in *incumbrance*) is a Service whereby the Possessors of Lands are bound
 =to pay a Duty to a certain Mill for grinding their Grain. Superiors
 =usually admitted their Vassals to grind at their own Mills, it being reason-
 =able to give any profit thereby to them rather than to Strangers. Many
 =also sold their Lands with a Provision that the Buyer and his Heirs
 =should come to the Seller's Mills. A certain Rate for grinding in these ar-
 ==es sometimes more and sometimes less was agreed on by Auction in
 =consideration whereof, the Duty payable by the Vassals and the
 =Price by the Buyers, was higher or lower, according as the Duty for grind-
 ==ing was heavy or easie. Heretofore also thought fit to oblige their Tenants
 =to come with their Grains to their own Mills, or to the Mills of others,
 =and because of that Service or higher Duty paid for grinding gave them an
 =Ease of their Rent. The proper and distant Interests of Millers and
 =Tenants doth reconcile the Thirlage of an Heritor's Land to his own
 =Mill, with the Principle of Law, *Res sua nemini servit*. The Meaning
 =of the Proverbe in this Case is that a Man's Lands are not properly restricted
 =to his own Mill by Way of Service, but only as an Effect of Property itself
 =and Abolition is more reasonable, than that every one's Property should
 =be restricted to his own Mill. Sometimes Heritors of Lands and Mills
 =disposed the Mills with a Thirlage of their own Lands, upon which
 =Account the Price of the Mills was raised. Ecclesiasticks used also to thirl
 =their Pithes to other Men's Mills. In some Places again, a Thirlage more
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