

## SERVITUDE.

1776. *July 19.* The BURGH of ANNAN *against* The MAGISTRATES of ANNAN-DALE, &c.

IN a declarator of the exclusive property of the common muir of Annan, free of servitudes, the Lords pronounced this interlocutor:—"Find, That the Magistrates, Town-Council, and community of the burgh of Annan have the sole and exclusive right of property in the common muir of Annan: And, with respect to any servitude thereon, claimable by the defenders, having considered the proceedings in the divisions of the commonties of Creea and Dornoch, carried on at the instance of these defenders, wherein the community of Annan was not found entitled to any servitude, nor even made a party to the division, but any possession had by them in said commonties was held to be accidental, and by start and overloup, owing to their contiguity, and not *animus* of acquiring a servitude; find that the same is the case as to the defenders their claim of servitude on the common of Annan; and therefore find, That the pursuers are entitled to hold the property of said common free of such servitudes."

1776. *August 2.* The MAGISTRATES of GLASGOW *against* PATRICK BELL.

IN the construction of a servitude, a servitude may be regulated, so as to be least hurtful to the servient tenement, if equally convenient for the dominant. See the case of *Wardlaw of Abden*, with regard to a kirk-road at Kinghorn, observed by Kilkerran. In the same way, if I have a servitude of a road through my neighbour's field which he intends to inclose, if he offers to put on a gate at the end of the road, but to give me a key to it, I cannot hinder him. The opposition would be in vain. But, though this is the case of a servitude, yet the case of a property is different: in this, no man has right to interfere with the proprietor, unless he use it emulously. This is the only restriction; but no law will entitle any other than the proprietor to meddle with it. These points occurred in a case decided 2d August 1776, Patrick Bell, merchant in Glasgow, *against* The Magistrates of Glasgow. The Lords decided against Bell upon this principle.

1769. PORTEOUS, &c. *against* JOSEPH ALLAN and ALEXANDER MORTON.

BESIDES the public and private roads for the use of travellers through Scot-