

## C L A U S E.

## S E C T. I.

*Communi Pastura.*—Species of Money.—*Moris, Maresiis.*—Free Rent.—Valid and Sufficient Infestment.—Debts *real and true.*—*Cum Piscatationibus.*

1585. February.

LAIRD of DUNDAS and His SON, *against* ELPHINSTON and His TUTOR.

THE Laird of Dundas and his Son, pursu'd the air of Mr Michell Elphinstoun and Al. Home of North Berwick, his tutor for his interest, for molestation made within the Mains of Arnestoun, pertaining heritably to the said Laird and his Son, and qualified the molestation by pasturing of their goods upon the said lands. It was *excepted*, That the said John Elphinston's father, Mr Michell, was infest heritably in all the pendicles of Arnestoun *cum communi pastura*, and by virtue thereof, he and his predecessors had been in possession in all time bygone, the which was as sufficient as if he had been infest with a special title. It was *answered*, That the words, *communi pastura*, could give him no action, nor make him no right, except it were express *in verbis dispositivis* of his charter *cum relatione in alio vel ad aliud*, as we say, with common pastures in such a part in such a muir, wood, or part of ground; for every charter commonly has the words, *communi pastura*, after the general words and clause that are contained into a charter after *tenend. et habend.*; for, that this common pasture can be judged no other thing, but everie man to have free liberty to pasture within himself. It was *reasoned* on the other part, That the words, *communi pastura*, behoved to work something *et hoc quod commune est cum alio commune quia unicuique sua res propria est, nec sibi servit.* THE LORDS repelled the exception, and fand, that the words *cum communi pastura*, could work nothing to infer any common pasture in another man's ground, except they were *in verbis dispositivis*.

## No I.

The clause, *cum communi pastura* implies no more than liberty to pasture on one's own property, not on any adjoining commonity, unless the clause be *in verbis dispositivis*.