

formerly disposed by him cum multuris, upon the Heretors producing a Precept from the Common Author (before he was divested of the Lands) ordaining Tenants to pay Multure to that Mill, albeit the Precept was granted without Consent of the Chapter. In Regard it was forfeited with long possession 7 Decemb. 1665 Vetch contra Duncan. And the Thirlage of any Lands as well as Church Lands to the Mills of Churchmen is more easily instructed than Thirlage to Mills pertaining to other private Subjects. Because the Evidence of the former were lost at the Reformation. Blair Lib. 4. Tit. 15. §. 6. But the simple coming to another Mill not of the King's Property, and paying more than Out-Town Multures, doth not infer a Service for the future 19 March 1635 M'Kay contra Menzie 13 July 1632 E. Norton and Crawford contra Feudors of Muckhart. Craig Lib. 2. Cause ea que sunt meræ facultatis, non præser. Cuntur. And such Payment voluntatis non necessitatis, can no more import a Thirlage than Persons who have been in Use beyond the Memory of Man, to travel such a Road to the Town, can be hindered to chuse another Way; or one who hath made use of a certain Taylor for 40 Years, stands obliged to employ him always thereafter. Which Position at the same Time wants not its Exception. For Tenants by long Use of their Masters Mill will find their selves astricted, albeit each of them pay not the same Multure and Service. And those thirled Multures, tho' of Lands not in a Barony will be acquired to singular Successors by Disposition, Apprising or Repudication of the Mill, whether it is dispence and adjudged <sup>only</sup> with the Multures used and wont or conveyed without Mention of Multures; unless either the contrary be expressed, or directly consequential from the Nature of the Right of Conveyance. as if a Mill be sold for a small Price Multures adequate and suitable is the Value of both Mill and Multures Stair Lib. 4. Again, Thirlage is established and cleared presumptively as aforesaid by paying 40 Year dry Multure. Further, albeit a Service of Thirlage is not regulariter constituted or proved by long Possession, yet the Quantity of a Thirlage constituted by Writ, may be established by Prescription Craig Lib. And so may the Quality. For good Services mentioned in general in a Bond of Thirlage, and the Condition of coming to a Mill were explained by the Deposition of Witnesses produced to instruct Possession upon the Bond: Vtz. That no KnaveShip should be brought and that Loads should be carried from and to the Mill upon the Mill Jouris 26 July 1712 Blair contra Egor. Albeit long Possession <sup>Simple</sup> will the Kings Barony to his own Mill; It would not suffice to astrict to the Kings Mill Possessors of Lands without his Barony 9 January 1662 Stewart

contra

contra Stewart of Aberlona  
Thirlage is acquired expressly by Writ <sup>21</sup> without Investment, as by a Bond of Thirlage and Possession, or Use of Payment which makes a complete Right Stair Lib. 4. Tit. 5. §. 3. McKenzie Just. Lib. 2. Tit. 9. §. 27. So possession upon a Bond of Thirlage obliging the grantor to grind at a Mill for free Multure and good Services proinde against a singular Successor by voluntary Acts of coming sometimes to the Mill tho' it went to other Mills when he pleased and never paid any Multure to that Mill in respect the Thirlage was not retained by Prescription, but by an express unquarrelable Writ, which any Act of Possession, tho' interrupted and not continued, doth revive 26 July 1712 Blair contra Egor. This was found constitutive by a Decree in Absence against the Heretors and Possessors, concerning them to pay their Multures used and wont in a fine coming. being Possession interrupted from the Decree and it was not quarrelled for 40 Years without necessity to prove 40 Years continuous Possession of thirled Multures 7 June 1676 L. Millars contra Stewart. Thirlage was found constitutive by an Act of Thirlage in the Regent's Court and immemorial Possession of free town of Glasgow 23 January 1673 Baines contra Coalzier. Possession of thirled Multure from Tenants for the Space of 40 Years conform to an Act or Actment in their Masters Barony which was subscribed only by his Bailie, bearing the Heretors Consent, was found sufficient to constitute a Thirlage without any Document in Writ under the Master's own Hand, Hope May, Drull. Tit. Mills and Multures E. Murray contra L. Sarsmill. It was also found established by a Decree and long Possession against Tenants enacted to pay by their Masters Bailie, without Citation or Consent of their Master Hope May. Mill contra Falconer Stair Lib. 2. Tit. 7. §. 16. But yet several Acts of Court by a Baron Bailie with 40 Years Possession and Decrees against Tenants of the Barony were not sufficient to infer a Thirlage without the Heretors express Warrant or Consent 12 July 1621 Douglas contra E. Murray and his Tenants Stair Lib. 4. Tit. 17. Thirlage was not inferred by an Act of a Baron Court bearing all the Tenants and Feudors of the Barony to have been called and thirled to the Mill; Seeing the Lands were there after feued for a certain Fee Duty pro omni alio onere without Mention of Abstraction. But the foresaid Act with 40 Years uninterrupted Possession was found to constitute a Thirlage against the Feudors, not accounting clandestine or partial Abstraction, but the going to other Mills with their whole Grist for one or more Years together, to be Interruption 11 January 1678 L. Balmorino contra Coalzier. 2. Thirlage is acquired by a Disposition and Investment in a Mill, with the Multures of the Disposer's Lands. Thus Thirlage was established by Investment in a Mill with the Multures of some Lands per express