

= sum and 40 years Possession of receiving Insüchen Miltür ed, albeit the Proprietor of the Land was infest cum molendinis before the others Infestment in the Mill 29 June 1665 Heretors of the Mill of Heithick contra Feuars. Nor was the going to other Mills sometimes, if not frequently, for a whole Year, without being challenged, sustained as a sufficient legal Interruption eodem die inter eadem & 29 June 1665 Montgomery contra Wallace and Boie. Because ordinarily persons think to sometimes privately and clandestinely go to other Mills. A Charter granted by King James the Bruce to the Town of Edinburgh, giving granting and confirming to the Burgesses thereof, the said Burgh of Edinburgh una cum portibus, ducibus, molendinis et ceteris pertinentiis to be holden of the Sovereign with all Privileges belonging to the Town in King Alexander's Time, was found to constitute a Thirlage within the Royallie to the Towns Mills; Whereby the Town is enabled to restrain and hinder the Brewers to use Stone Mills or other Engines, or any other Thing whereby the said Thirlage may be prevented and diverted 19 Decemb. 1730 Magistrates of Edinburgh and Feuars of their Mills contra Alexander. Years a Charter from the King of Landes cum molendinis eorundem et pertinentiis in Favour of a private Person, was found to bind these Lands to that Mill 26 January 1733 Graham of Gartmore contra Ure of Shergartoun. A Clause in Feudal Charters obliging them to come to a certain Mill with all grindible Corn growing upon their Lands, which they should happen to grind, and to pay Miltürs and perform Mill Services used and wont, and also to grind thereat all other Corn imported within the said Land for out-sation. The same was sustained to import a Thirlage 22 July 1709 Feuars of Dunduff contra Madril of Muirmill. A Charter of a Mill from a Bishop cum miltüris, without the Word astrictis, of Lands lying within his Diocis, anterior to Feudal Charters of these Lands in Favour of others bearing the Reddendo of a Feudal Duty pro omni alio onere, and explained by another Charter upon Resignation of the Mill cum astrictis miltüris of the said Lands, designed as lying within a Barony posterior to the Charter of the Lands, was found to constitute a Thirlage. Notwithstanding the intervening Feudal Charters pro omni alio onere, which were not found media impediementa to hinder the last Charter of the Mill to explain the first 23 Feb. 1719 Feuars & Inhabitants of Old Aberdeen contra Frazer. Especially considering that the Clause pro omni alio onere, relates only to feudal Prestations. Seven Years Possession upon Infestment in a Mill cum astrictis miltüris of certain Lands, doth afford the Benefit of a possessory judgement and is a sufficient ground to subject the Possessor of the Lands to the Payment of thirl Miltürs, till he get himself exempted by Reduction or Declarator, notwithstanding of a prior Infestment cum molendinis in his

his own Person 28 June 1686 Macswel contra Macswel Stair Lib. 2. Tit. 7. §. 22. But a possessory judgement upon Infestment and seven Years Possession of a thirl Mill, was not disclaimed to hinder the building of a new Mill upon the astricted Lands: In Respect the Thirlage was constitute with this express Quality, that the same should cease upon the building of such a Mill; which Quality was received summarily without a previous Declarator 5 July 1705 Haigs contra Haliburton and Rutherford. Thirlage is a perpetual Service. For it is not inferred in an Agreement for a definite Time Stair Lib. 2. §. 7. In an Heritor having thirl the Corn of his Lands to another Mill perpetually, except his Heir after his Death happen to build a Mill upon those Lands: It was found, that when the Mill that stood in thirl by the Heritor of these Lands could not grind, the Thirl to the other's Mill continued still 14 March 1707 Haigs contra Haliburton.

Wassellers Licenters Tenants and temporary Tenants of Lands cannot be a Service thereon in Prejudice of the Thirl. Neither will any Thirlage constitute by the Heritor who is that provides the Superior while the Lands are in his Hands in Ward or Vassalry, unless he be consented to the Service 11 Decemb. 1666 S. Lauder contra Grants of Dumfries and Whitehead. Which Consent of the Superior to a Thirlage reserved in the Disposition of an Apprising, was not inferred from his granting a Renter and Infestment in Obedience to a Charge upon the Apprising; where the Charter mentioned no such Reservation, but only related to the Disposition containing the same, eodem die inter eadem. But a Thirlage constitute by Prescription (to which the Superior is presumed to have consented from his Acquiescence and not interrupting as he might) will militate against the Superior Stair Lib. 2. Tit. 7. §. 2.

The Quantity of astricted Miltür, Extent of the Subject thirl'd and Effect of Thirlage, are regulated by Custom when the Thirlage is acquired by Custom. Thus Thirlage constitute by Act of Court and long Possession of the Town Miltürs of Oats and Peas thirl'd Fire and Water within the Thirl, was not extended to Peas avoided by sale to Merchants that never thirl'd Fire and Water there; for which there was never Miltür paid. Because the Service could not be stretched beyond the Possession which established it 23 January 1673 Cairner contra Cozier. But the Quantity of astricted Miltür, Extent of the Subject thirl'd, and Effect of Thirlage are regulated by Writ, when the Service is constitute by Writ. In which Case, also such a Writ relate to preceding Custom, that will be sufficiently explained, and determined by proving 40 years Possession