

Session after the Date of it Stair *Pro. 9. 18.* The extent of Thirlage acquired by Writ varies according to the different Tenor of the Writ. Disposition of the Mill of a Barony cum milluris, or cum astrictis milluris bridges the whole Barony under Thirlage, the former by force of the Mill be designed the Mill of the Barony. But by Disposition of the Mill of a Barony cum milluris solis decemfructibus, no Lands are understood to be thirled, that were not so. Before, if the Right do not mention it to be the Mill of the Barony it Decemb. 1666 E. *Asp. contra* Tenants of Dalmoreton. Nor is a Thirlage established by the Disposition of the Mill of a Barony with the Pertinents 12 July 1625 *Dougl. contra* E. Murray. Albeit Thirlage ^{being} a Service in itself odious and unfavourable, is rather to be retrenched than enlarged or extended; and tho. by the common Law it was allowed only that Vassals or Tenants should grind their Corne at their Superior or his Lord's Mill rather than at another, upon the Account of natural Fees between Superior and Vassal, Master and Tenant; and to put Men to grind oven such other Corne as they have no Necessity to grind, would seem a thing in itself unjust and proceeding upon Oppression. Yet Thirlage of Lands simply affects omnia grana crescentia therein, the whole growth of the ground; albeit for 40 Years preceding the Tenants or Possessors had never paid or been pursued for Multure of more than they had Occasion to grind 26 June 1635 S. *Waightoun* contra *Hume of Poore*. In a Thirlage omnium granorum crescentium Multure was found due for Corne that were sold 21 January 1601 *Grierson* contra *Gordon*. Nor was any Allowance of free Multure indulged upon the Account of Free Duties Ministers Stipends and publick Burdens 14 January 1662 *Nicolson* contra *Feuars of Sillicutrie*. Altho. the Possessor of Lands thirled is not obliged to sell Corne for the Payment of these, and so the Remainder of the Crop is all in Effect that he can call his own. Such a Thirlage of the whole growth of the ground of a Barony was extended to the Manns or demourant Lands thereof 23 July 1673 *Dundas* contra *Stene of Kalyards*. A Clause in a Charter obliging Persons to come to a Mill with all graine Corne growing upon their Lands that they should happen to grind and to grind them at all Corne imported within the Boundes of the said Lands for Outsiden Multure; was sustained to extend to all vendible Corne growing upon the astricted Lands in so far as necessary for the Consumption of Families within the Thirl; but that the growth of the ground might be freely exported, and that if grana crescentia are not sufficient for their Consumption, what is imported for that End pays Outsiden Multure 23 Decemb. 1709 *Feuars of Dundaff* contra *Madril* ~~of~~ *Muirmill*. But in a Thirlage of the whole growth of the ground, Tithes not tholing Fire and Water within the Thirl, that is, not steep'd or kilnd there is excepted 14 January 1662 *Nicolson* contra *Feuars of Sillicutrie*. Nor was Possessor in molentino regio of receiving Matures of all Corne of a Barony without Exception of Tithes, sustained relevant to thirl the Tithes unless what ^{tholds}

tholed Fire and Water here 8 January 1662 *Stewart* contra *Feuars of Aberleone*. But Tithes were found Subject to a Thirlage upon 40 Years Payment of Multure for the whole growth of Lands without any Abatement of Tithes, conform to a Clause in a Charter thirling omnia grana crescentia. Farm paid to the Master if not grinded at another Mill doth not fall under a Thirlage of the whole growth of the ground 11 July 1625 *Keith* contra *Tenants of Dolerhead*. For it is presumed that Farms must be sold. Yet yet are seen one Horse Corne brought under such a general Thirlage of omnia grana crescentia 14 January 1662 *Nicolson* contra *Feuars of Sillicutrie* 21 January 1668 *Grierson* contra *Gordon*. Spotswood *Pratt*. Tithes Mills and Matures are a presumptive Thirlage founded on the Sovereigns Privilege and a possession presumed retro was understood with the Exception not only of one Horse Corne, but also of the thirled Corne not consumed in his Family residing within the Thirl, and of any surplus Bolls more or sufficient Maintenance for the Tenants and their Families spent upon the ground sold by them. But so much of the Farm as is spent in the Heritors Family within the Thirl is astricted. Foreign Corne bought in Lieu of the growth of the ground sold by the Tenants or Collagers pay Multure; But those bought by him for his Maintenance of his Families, in case of a scanty Crop that is not sufficient for that Use are free from astriction 14 January 1709 *Keith* contra *Ralidit* contra *Howie* ~~of~~ *Kerrincarrig*. By a Statute of King William the first (Cap. 9) all grain happening to be set down upon ground thirled, pays Multure there. But now that is in Disuse. Thirlage of inverta et illata expressly doth not reach all Corne brought within such a Place. But comprehendes only what tholes Fire and Water upon the ground Subject to the Service. Lawyers are divided in their Sentiments about the Import of tholing Fire and Water. *Craig* (Fo. 2. 254) and *Spotswood* (*Pratt*. Ed. Mills and Matures) seem to extend it to Malt brewed within the Thirl, tho. made without the same. And a Decision run once this Way in respect of the particular Custom of the Place 24 Novemb. 1660 *Dunfay* contra *Town of Kirkcaldy*. And the several Customs of Mills made the Decisions vary in different Cases. But the Lord Stair (*Pro. 9. 20.*) and Sir George *M'Kenzie* (Just. Lib. 2. Tit. 9. 20) understand by tholing Fire and Water only steeping and kelping, and not brewing. And so it was decided 22 Feb. 1707 *Administrators of Heriots Hospital* contra *Brewers in the Cannogate*. For as it were absurd to take it in the rigorous literal Sense comprehend