

or enjoy his Vassal the Improvement of his Property to the best Advantage where it doth not interfere with his Interest. But according to my Lord Stair Lib. 2. Tit. 7. §. 23 it is not lawful for any Man to build a Mill within another's Thirl, in order to get out-suchen or voluntary Multure, for the same thing might be pretended in Favour of Querns or Hand Mills which in few Parts are allowed. And it were no easy Matter in such a Case to discover abstracted Multure. Some hold that the Master of a Mill may at his own Hand demolish another Mill that happens to be ^{erected} within the bounds of his Thirl. But Craig (Stair. §. 4.) ^{thinks} that would warrantably be done. The building of a new Mill may indeed before it is completed and set a going be hindered and civilly interrupted *novi operis nunciatio* Stair. Tit. 11. §. 1. But the Lords refused to stop summarily upon a petition, the building of a Mill alleged to be within the Petitioner's Thirl in regard the Thirlage was not clear 29 July 1673 Dundas of Breachmill contra Thene of Halyards. And the building of a contraverted Mill Dun. Dyke was allowed to proceed with this Qualify, that it should be considered at advising of the Ords as if no such Allowance had been granted 20 June 1705 Town of Dumfermling contra Heretors upon the Water of Yith. A Mill cannot after it hath gone 15 Days be thrown down by any man Stair Tit. 11. §. 1. Nay, so much are Mills favoured as being particularly useful in the Country, that an Heretor was not suffered to stop the Watergate of a Mill thro' his Land not prejudicial to him, altho' it was not established either by Consent or Prescription Stair Tit. 11. §. 1. If Persons thirled come to the Mill and be refused Service, or if there be no Servants there, or if the Mill be insufficient or not in Case for grinding thro' Default of the Master or Heretor, of the Mill; in either of these Cases, they may not only carry their Grain with Safety to other Mills free from any small Duties or Fees to Servants of the Thirl Mill, but also will in Payment of their insuchen Multure, get Allowance of what out-suchen Multure happens to be exacted at the Mill they go to Stair Tit. 11. §. 27. But if the going of the Thirl Mill be stop'd by Frost, or the breaching of the Dam by some unusual Torrent or Land-Flood; or if the Mill be rendered unfit for Service by any other Accident, which the Master or Miller could not prevent: Such as are thirled may in the Interval go and grind where they please, without being liable for small Duties, but only for Multure 9 Feb. 1666 Heretors of John's Mill contra Tenants Stair Tit. 11. §. 27. Thirlage is thus far a real Burden, that it affects all singular Successors in the Land Stair Lib. 4. Tit. 15. §. 2. or Tit. 14 March 1707 Haigs contra Halyburton of Newmains, abstracted; but doth not militate against the Superior, unless consented to by him vid. Supra Page 700. And it is rather allow'd

den upon the Fruits, than upon the Ground itself. In so far as it proceeds no real Action for pointing of the Ground, but only a personal Action against the Possessor who laboured and had Right to the Crop at the Time of the Abstraction Stair Tit. 11. §. 27. For a Buyer purchasing the Fruits will not be liable, ^{nor get the Heretor of the Land, whom they are liable} *quia talis*, if not in the natural Possession by labouring Stair Tit. 11. §. 27.

Action arising from a Right of Thirlage is only personal; but the Conclusion of it is sometimes possessory as when the Thirlage is special as to the Lands and liquid Quantities of Multure, and hath been done with 7 Years Possession; Sometimes petitory, when there hath not followed 7 Years Possession upon the Thirlage, but there hath been Possession within the 7 Years; and sometimes declaratory, when more as 7 Years have intervened since the Constitution of Thirlage, and no Possession within 7 Years. The Reason of these different Conclusions is, because those who are out of Possession, cannot sue for Fruits or Damages from the Time the Right was constituted, but only from Relation to the Declarator whereby the Possessions are put in mala fide; they not being accountable for Fruits before that Time as bona fide consumers, in case mala fides be otherwise proved upon them. In the petitory and declaratory Actions, the Heretor of the abstracted Lands must be called Stair Lib. 4. Tit. 15. §. 9. Thus no Process was sustained against Tenants for Matures, or doing Thirl Services to a Mill, their Master not being cited 9 Feb. 1620 Ed. Wordis contra Tenants of Drinkinty. Yea all Acts and Decrets against Tenants upon such Account without calling their Master, are null by Way of Exception, if quarrelled before Prescription; unless the Thirlage hath been constituted by former Decrets, whereon he was cited Stair Tit. 11. §. 17. But it sufficeth in possessory Actions to call Tenants and Possessors Stair Tit. 11. §. 9. A Declarator of Thirlage may be of the Tenor following. Our Will is and we charge you, that ye lawfully summon B. Heretor of the Lands of A. or Liferenter or Wadsetter of the same, to compare A. to answer at the Instance of A. Heretor Liferenter or Wadsetter of the Mill of A. with the Matures Suchen and Services thereof, conform to their Inseparations of the same dated &c. and also at the Instance of J. Tacksmen or Tenant of the said Mill. That is to say, the said Defendants to hear and see it found and declared, that the said Lands of A. were abstracted and thirled to the said Mill, in Payment of the Pursuers of the Quantities of Matures Suchen & Sequels after specified, vid. &c. for the Reasons and Causes following (Here must be inserted the