

the particular Ways of Abstraction and the Proof thereof mentioned and that the Pursuer have good and undoubted Right to the said Multure such Sequels and Services since the said Abstraction, and in all Time coming, and ought to be answered and obeyed therein by the Defender their Tenants and Possessors of the said abstracted Lands conform to the Quantities of the grindable Corns growing thereon, grinded at any Mill, or grinded or sold and not grinded at the Pursuer's Mill, and also of all Grains invecita et illata holding Fire and Water within the said Lands thirled as aforesaid conform to the Law and daily Practick of this our Realm according to justice. If the Action is grounded upon a Right of Thirlage constituted by Prescription, it is sufficient to label and prove ordinary coming to the Mill, and paying the Duties purvised for during the course of Prescription, without Necessity to instruct that such a Thing was done every Year Stair Jhd. 8. 12. But the Defender offering to prove Interruption for several whole Years, either via juris by a Decretal of Exemption, or via facti, by grinding elsewhere for some whole Years: His Proof will be preferred as the more pregnant Stair Jhd. Contravention of Thirlage by grinding at another Mill is pursued by Action for abstracted Multure. His a good Defence in a Process for abstracted Multure, that the Defender whether Heritor or Tenant laboured no part of the Lands thirled. For it is in the Power of any Person to labour more or less, or Nothing, or to inclose the ground for some other Use as he thinks fit, and so to free himself from Multure due in whole or in Part. But this is to be understood only of ordinary insuchen Multure: For if there be a stock or dry Multure constituted by the Heritor, and he only can do it, the same will still be due whether there be any sowing or not Stair Jhd. 8. 2. If a Pursuit for abstracted Multure is founded upon a Bond or Act of Thirlage it is relevant for eliding the same to say, that the Defender or his Author was in feft as a singular Successor in the Lands alleged to be abstracted, before any Possession followed upon the Deed of Thirlage Stair Jhd. 8. 12. A relevant Defence against a Right of Multure claimed by Virtue of the positive Prescription may be founded on Interruption for several whole Years: And a singular Successor may relevantly propone this Exception, that he bona fide possessed the Lands and consumed the Fruits, without knowing of any Service of Thirlage Stair Jhd. In a Process for abstracted Multure of 20 Years the Quantities being referred to the Defender's Oath, and they having deponed that they abstracted none but brought all to the Mill in the Terms of the Thirlage, they were not obliged to depone, that all these Matures were paid, but only if they knew

know any part of them to be resting, and how much that was 2 Decemb. 1679 Ramsay contra Town of Kirkaldy. For to put them to swear for about such a small Duty after so long a Time, might occasion many such Processes, and it was scarce presumable they would go from the Mill without paying. A Vassal thirled to his Superior's Mill is not liable for abstracted Matures, tho' he, without Respect to the Thirlage, move his Tenants to come to his own Mill and get a greater Duty for it upon that Account: But only the ~~tenants~~ Tenants abstracting are personally liable so Decemb. 1667 E. Coskils contra Sheriff of Galloway and Tenants of Auchnatoroch. Because any Man may warrentably desire others to come to his Mill, and the Abstracters, and not those to whose Mill they come are obnoxious to a Suit for abstracted Matures. Knaveship Lock and Bannock, the payable for Service at the Mill may be claimed in a Process of abstracted Matures, where no Service was done, seeing the Master of the Mill believed to keep Servants there, for labouring the Corns when they happen to be brought 27 March 1628 Adamson of Bruce contra Tenants of Stralagan. As dry Multure may be sought, the Nothing be abstracted or grinded elsewhere.

A Right of Thirlage is taken off either tacitly or expressly. Thirlage is taken off tacitly 1. By Confusion, when the Right of the Mill and Lands thirled come in one Person. 2. By the negative Prescription, or simple non Payment of insuchen Multure for the space of 40 Years Stair Lib. 2. Tit. 7. §. 29. But Matures due by the Reddeno of a Charter, do not fall under such Prescription 11 Decemb. 1678 Ramsay contra Town of Kirkaldy. And albeit Infeftment in a Mill with Matures doth intitle one to the ordinary Mill Services of upholding the Mill and Dam and bringing home Millstones: Yet a Privilege of Immunity from these is required by Prescription 27 Feb. 1668 Wairland contra Leithie. It was once debated but ^{not} decided 19 Feb. 1665 Heritor of John's Mill contra Feu-ars) whether as a Right of Thirlage may be extinguished, it may be also restricted by Prescription and 40 Years Use of paying a lesser Quantity of Matures? Some of the Lords thought it could, because Possession of a Part of the Multure, excludes Prescription as to the whole. Others were of Opinion that where the Quota of Multure is specified and determined in the Infeftment of the Mill, Possession of a Part is equivalent to Possession of the whole for hindering Prescription to run: But if the Infeftment bear only the general of Matures used and wont, and the Quantity thereof is determined by a Decree conform to a Proof of Use and Wont; that Quantity might be altered or modified by Prescription.