

No 115.

Once found, and only once, that all the lands of a barony are understood to be thirled to the mill of a barony, without any thirlage in writ.

1629. July 17.

L. NEWLISTON *against* INGLIS.

IN an action for abstracting of multures, as thirled, it was found, that some lands of a barony being feued by the baron for a certain duty *pro omne alio onere* expressed in the charter, and thereafter the mill of the barony being feued by the baron *cum astrictis multuris et sequelis* diverse years thereafter; it was found, that the foresaid feuar, albeit his right was before the disposition made of the mill, was subject in his thirl-multures, as thirled and astricted to that mill, notwithstanding of his right preceding the said disposition, seeing his said right bore not *cum molendinus et multuris*, without which clause the priority could not liberate him. To the which thirlage, the LORDS found, That he is subject as well to him who had acquired the right of the mill from the baron, to be holden of himself, as if the said mill had remained with the superior unannailzied, notwithstanding that the lands were annalzied before the mill was annalzied; and notwithstanding that the saids lands feued, nor no other lands of that barony was at any time, before the vassal's feu, thirled by act, constitution, or any other writ to the said mill; for the LORDS found, that naturally all the lands of any barony, without thirlage in writ, are thirled to the mill of that barony, and that the thirlage is a natural servitude, and inheres naturally in all the lands of that barony, so that any tenant or feuar of the lands of that barony are naturally thirled to the mill of that barony, and ought to pay multure for any corns growing on these lands abstracted from that mill; and consequently, that the feu of the lands wanting that clause *cum molendinus, &c.* liberates not the feuar from the natural servitude inherent in his land to the said mill of the barony; in which thirlage he was found to stand still obliged to the feuar of the mill, as he was to the baron before the feuing of the mill, albeit the land was feued before the mill was feued, as said is. Also the LORDS found, that the feu of the mill, with the multures and sequels, &c. extended also to the leading of the mill-stones, and repairing of the dam, and other services about the mill, whereto the feuar of the lands remained subject, notwithstanding of the feu; and albeit the same bore no such service, yet the tenants of the barony remained subject in the said service.

Act. *Advocatus* & *Stuart*. Alt. *Nicolson* & *Belsber*. Clerk, *Scot*.

Fol. Dic. v. 2. p. 106. Durie, p. 464.

* * * Kerse reports this case :

AN exception of infestment of lands, to be holden feu for payment of a silver duty, *tant. pro omni alio onere, &c.* and that anterior to the pursuer's infestment of the mill and astricted multures of the barony, repelled; except it were said, that he was infest in the lands *cum molendinis et multuris*; and the pursuer not forced to reply upon an anterior thirlage.

Kerse, MS. fol. 94.