

No. 112.

The Lords, moved, not so much by the use of coming to the mill, which might have arisen from motives of conveniency, as by the decrees which had been taken in the baron-court for abstractions, and the presumptions in favour of the mill of a barony, found, "That the defenders are astricted to the mills of Alloa, and that they cannot erect steel-mills within the thirle."

Act. *M<sup>c</sup>Queen.* Alt. *Lockhart & M<sup>c</sup>Laurin.* Reporter, *Monbodo.* Clerk, *Kirkpatrick.*  
G. F. *Fac. Coll. No. 98. p. 178.*

1775. December 20.

COLONEL ROBERT SKENE of Hallyards *against* JAMES REDDIE and Others.

No. 113.

Astriction to a kiln, though resorted to by the sucken, is not a part of the thirlage.

In a declarator of thirlage at the instance of Colonel Skene, as proprietor of the lands and mill of Burngrange, against Reddie and others, besides deciding other points in the cause, the Lord Ordinary gave judgment upon one as follows: "And as the defenders neither deny the immemorial practice, nor the extent of dues exacted for kilning their grain, as condescended on by Colonel Skene, finds, That this is also part of the thirlage, and that they are liable for the said dues."

The defenders having reclaimed, the Lord Ordinary explained the ground of his judgment, viz. That he considered it as an incident to the thirlage itself: But the Court altered, and

"Found the defenders are not thirled to the pursuer's kiln."

Act. *Al. Abercrombie.* Alt. *M<sup>c</sup>Laurin.* Clerk, *Pringle.*  
*Fac. Coll. No. 211. p. 161.*

1777. June 19. MAGISTRATES of CUPAR *against* LEES and Others.

No. 114.

A thirlage was sustained, though not conveyed in the dispositive clause of a Crown charter, but only in the *tenendas*, and followed by possession beyond the years of prescription.

In this case, the Magistrates, who had a Crown charter with a clause in the *tenendas, cum multuris et sequelis*, had been at great expense in repairing the mills, in consequence of which, in 1750, they entered into a contract with the Corporation of Bakers, by which the latter, in consideration of the expense above mentioned, "and to compensate for the same, obliged themselves and successors in the Corporation to pay, over and above the ordinary multures, dry multure for all flour not grinded, but bought by them, to be baked and vended within the burgh," and the subscribers obliged themselves to take new members bound to come under the same obligation. In a declarator brought by the Magistrates, the Bakers pleaded in defence, That there was no evidence of any regular obligation