

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^cQueen.* Alt. *Lockhart & M^cLaurin.* 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^cLaurin.* 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

of the Corporation to the above effect, but only the subscription of four individuals; and that the terms of it had seldom or never been observed. It was questioned, moreover, whether the Bakers had power to bind themselves as a Corporation, or to oblige their successors to extend a thirlage beyond the terms of its constitution and former use. The Lords found, That the obligation 1750 was a valid and subsisting deed, binding on the granters and their successors in the Corporation; but, in respect none of the inhabitants of Cupar, except the Bakers, were called in the action, reserved to them all defences competent.—See APPENDIX.

No. 114.

Fol. Dic. v. 4. p. 369, 370.

1781. February 8.

DAVID BALLARDIE, Tacksman of the Mill of Ledcarsie, and the Proprietors of said Mill, *against* ALEXANDER BISSET, Proprietor, and WILLIAM BISSET, Tacksman, of the East-side of Meikle Fardel.

Part of the barony of Fardel had been feued out to be held of the proprietor of the remaining parts of the barony, for payment of certain feu-duties; and, by the feu-rights, the lands feued were astricted to the mill of Redgodens, the mill of the barony of Fardel.

Mr. Mackenzie of Delvin was proprietor of the mill of Redgodens, and that part of the barony of Fardel not feued out; and he having purchased the mill of Ledcarsie, in the neighbourhood of the lands of Fardel, and which mill was turned by the same water that supplied the mill of Redgodens, thought it for his interest to allow the mill of Redgodens to go to ruins.

The sucken thirled to the mill of Redgodens were, *1mo*, The part of the barony of Fardel, Mr. Mackenzie's property; *2do*, The parts of that barony that had been feued out, particularly the defender Mr. Bisset's lands of Meikle Fardel; and, *3tio*, Some lands the property of Mr. Kinloch of Gordie and Mr. Mercer of Lethindy.

An agreement took place between Mr. Mackenzie and Messrs. Kinloch and Mercer, in consequence of which, Mr. Mackenzie sold them the thirlage of their own lands; and he prevailed upon the tenants of his own part of the barony of Fardel to go to the mill of Ledcarsie, in place of the mill of Redgodens; but Mr. Bisset refused to frequent the mill of Ledcarsie with the grain of his lands of Meikle Fardel, which was thirled to the mill of Redgodens; and, after that mill had been allowed to go to ruin, Mr. Bisset went to other mills with the produce of his lands, and continued so to do until Mr. Mackenzie's death, which happened about nine or ten years after the mill of Redgodens had been demolished; and, during that period, no action was brought to compel Mr. Bisset to frequent the mill of Ledcarsie, in place of the mill of Redgodens.

No. 115.

The mill of the thirlage having become insufficient, another was built in a different place. It was found, that the thirle was not bound to go to it.