

1621. July 11. EARL OF MURRAY *against* ———.

No 113.

THE LORDS found, That 40 years possession, with acts of Court, could not prove thirlage, except there were a direct deed done by the master; and found, that acts of Court done by the bailies, except they had special power to that effect, could not induce thirlage.

*Fol. Dic. v. 2. p. 105. Kerse, MS. fol. 94.*

\*.\* Durie reports this case:

1621. July 12.—IN the action for abstracting of thirled multures, pursued at the instance of William Douglas of Earl's-Mill, against the Earl of Murray and his Tenants, founded upon a feu set to him of some lands, and of the mill of Tarnvay, with the pertinents thereof; which mill is the only mill of that barony, and upon diverse acts of thirlage made by the Earl of Murray's bailies at many times, and 40 years possession of receiving of the thirled multures from the tenants, corroborated with decreets against the tenants in the bailie's courts;—the LORDS assoilzied from the pursuit, by reason that they found that the feu contained no express thirlage of the saids lands to the mill disponed, and that the bailie could not astrict or thirle the lands, without an express warrant from the lord and master of the ground. So whatever acts, decreets, or possession, had followed thereupon, thereby the master, who was neither called, nor consented, could not be prejudged by his bailies, without his own express deed.

Act. Hope.

Alt. Nicolson &amp; Aiton.

Clerk, Scot.

*Durie, p. 2.*

1629. January 24.

DAVIDSON *against* TENANTS astricted to the Mill of Ord.

MR WILLIAM DAVIDSON pursues the tenants astricted to the mill of Ord, whereof the pursuer was fiar, for multure of *invecta et illata* which had tholled fire and water within the ground astricted to his mill. It was *answered*, That his infestment bore no such express clause. To which it was *replied*, That the tenants have been in use to come with all that has tholled fire and water. To which it was *duplicated*, That a voluntary custom could not induce against them, and their successors, a perpetual servitude. THE LORDS found the exception and duple and relevant.

No 114.  
Found in  
conformity  
with Ogilvie  
against Te-  
nants, No 111.  
p. 10849'

*Auchinleck, MS. p. 129.*