1775. *December* 20. COLONEL ROBERT SKENE *against* JAMES REDDIE and OTHERS.

THIRLAGE.

Astriction to a Kiln, though resorted to by the sucken, is not a part of the Thirlage.

[*Fac. Coll. VII.* 161; *Dict.* 16,062.]

HAILES. I never read of any servitude as this,—a thirlage to a kiln. Craig, indeed, mentions *clibanus*, by which he understands a malt-kiln; but that has nothing to do with the present case. We must not introduce new servitudes into the law.

COVINGTON. I never read of such a servitude in any of our lawyers, nor did I ever see it in any writings.

KAIMES. In some parts of the country, every man has his own kiln; in others not, and then they resort to the kiln at the mill.

GARDENSTON. I considered this as an incident of the thirlage inconvenient to no one, for the work is done as cheap by the miller as the persons thirled could do it to themselves.

COALSTON. In East Lothian, it is the practice to go to the kiln of the miller; but this is understood to be from choice, not necessity.

On the 20th December 1775, "The Lords found the defenders not thirled to the kiln;" altering Lord Gardenston's interlocutor.

Act. A. Abercromby. *Alt.* J. M'Laurin.

1776. *January* 18. ELIZABETH and JAMES DICKSONS *against* GEORGE TROTTER.

ASSIGNATION.

The debtor's private knowledge is not equivalent to an intimation, nor is parole evidence competent for proving such knowledge.

[*Fac. Coll. VII.* 163; *Dictionary*, 873.]

MONBODDO. If the question were between creditors, private knowledge could not be proved by witnesses; but the case may be different where the question is with a debtor. In that light I consider Mr Trotter.

JUSTICE-CLERK. Private knowledge has never been held as sufficient when supported by no writing whatever. It would be dangerous to prove, by wit-

nesses only, that a man had the private knowledge of a deed; for knowledge is an act of the mind, and witnesses may differ in their opinion as to what will infer such knowledge. It would be going very far to refer private knowledge even to the oath of party; for he might say, "I did know so and so; but I relied on the law, which, by assignation intimated, puts me *in mala fide*, but not otherwise." It might be difficult to divide this oath. The case of proving by witnesses is still narrower.

GARDENSTON. It would be dangerous to controvert the principles just now delivered. It is a valuable part of our law not to give credit to witnesses in matters of debt. A debt cannot be created by witnesses. You might as well prove the assignation as the intimation by witnesses.

PRESIDENT. It would hurt the law extremely, if this evidence were received. Homologation may, in some cases, be proved by witnesses, because valid and effectual acts of homologation are such, that they cannot be applied to any other case; whereas private knowledge is a thing uncertain. Because, if there has been any loss here, it has been occasioned by the neglect of the pursuers in not intimating their assignation.

On the 18th January 1776, "The Lords assoilyied;" adhering to Lord Stonefield's interlocutor.

Act. B. W. M'Leod. *Alt.* W. Nairne.

1776. *January* 18. WILLIAM SIBBALD *against* JOHN SIBBALD.

WRIT.

What if one of the instrumentary witnesses is dead, and that the only other instrumentary witness gives oath of the subscription by him, as witness, being truly his subscription, but adds, that he did not see the granter of the deed adhibit his subscription.

[*Faculty Collection, VII.* 162; *Dictionary,* 16,906.]

JUSTICE-CLERK. If, after possession has been had for near 40 years on a deed, and one of the witnesses is dead, you will set aside the deed upon the evidence of the other witness's saying, that, at the distance of 40 years, he did not see the party subscribe; you will overturn half of the settlements in Scotland.

HAILES. What has been just now said, will be confirmed by an observation drawn from the testimony of this old man when compared with the deed itself. He says, that the paper was folded when he subscribed, which concealed the subscription of the principal party; and as to this fact, he is very positive and distinct. Now, it is plain that he was here speaking at random; for it is evident, from ocular inspection, that there never was any such fold in the paper as he mentions, and that it would have been scarcely possible to make such a