

ard of knaveship, but every mill hath it according to ancient custom ; and in the act of Parliament anent measures, there is a particular exception of the measure of several baronies of lands ; and it is a groundless pretence, that parties concerned will not perceive the difference of a measure, when it ariseth from a third part to a fourth part.

No 121.

THE LORDS found, that there being no determinate quantity of this knaveship, and that it having been only, and constantly paid by this muty, or third part of a peck, they found that it was the due measure, and that the act *in anno* 1613, without subscription or possession, did not prove the feuars consent ; and they had no regard to the decret 1637.

*Stair, v. 2. p. 139.*

1673. January 23.

BAIRNER against COALZIER.

BAIRNER being infest in Cultmill, with the astricted multure of Cults, being a pock of five firlots, pursues Halcroft, being a feuar of the barony, for the multure of his bear abstracted. The defender *alleged*, Absolvitor ; because he was infest in his lands long anterior to the pursuer's infestment of the mill for a feu-duty, *pro omni alio onere*. The pursuer *answered*, That the defender was thirled by an act of thirlage, in the Regality Court of Culross, conform whereunto the pursuer had been in constant possession past memory of intowns multure ; and such acts of thirlage are sufficient titles for prescription, to constitute a thirlage. The defender *replied*, That a thirlage introduced, not by contract or infestment, but by act of thirlage, and long possession, could not be extended beyond that possession which did constitute the same ; and the defender makes no opposition against the thirlage of oats or of bear, which thole fire and water within the thirle ; but as for bear sold to merchants, that never tholed fire and water within the thirle, the pursuer was never in possession of any multure therefor. The pursuer *duplied*, That it was sufficient for him that the defender was in possession of the intowns multure for bear continually ; and albeit the defender did clandestinely abstract some part of the bear, that could not import a liberation ; for so there is no thirle, but there is some clandestine abstractions.

THE LORDS found, that this thirlage being constituted by possession, upon an act of Court, that the defender's alleagances, that he was constantly free of thirle of all the bear that tholed not fire and water within the thirle, which was not as a latent abstraction, but known and avowed, was relevant.

*Fol. Dic. v. 2. p. 107. Stair, v. 2. p. 159.*

No 122.

In a thirlage, constituted by act of court, a defender found free of a particular species, *nam tantum prescriptum quantum possessum.*