

1686. *January.*SIR ADAM BLAIR *against* CREDITORS of WILLIAM RIGG of Carberry.

No. 6.

FOUND, That a bond of liberty to run levels through the granter's ground, not clothed with possession, is not a real servitude; but the Lords inclined to sustain inhibition upon the bond, as sufficient possession.

*Fol. Dic. v. 2. p. 373. Harcarse, (SERVITUDES) No. 851. p. 243.*

1712. *July 26.*HENRY BLAIR of Newtownmill, *against* DAVID EDGAR of Kethick.

No. 7.

HENRY BLAIR having pursued a declarator of thirlage against David Edgar of Kethick, upon an old contract in the year 1633, betwixt John Edgar, then heritor of Kethick, and Patrick Blair, the pursuer's author, whereby the said John Edgar "obliged himself, his heirs, successors, and tenants of his lands, to haunt and repair to Patrick Blair's mill with their grindable corns to serve their houses and families for free multure, and good services, viz. a peck of six firloths, used and wont," it was found relevant for the defender to free his lands of thirlage by the contract, that he was a singular successor to the said John Edgar, and the obligation never clothed with possession. The pursuer produced some witnesses for proving possession conform; who deponed, that the defender came to the pursuer's mill when he pleased, and went to other mills when he pleased, without being challenged; and when he came to the pursuer's mill, never paid knaveship; and the mill horses brought the corns to the mill, and carried home the meal.

A bond of thirlage found a real servitude, good against singular successors, though no other possession was proved than that the granter sometimes went to that mill, and as often to others.

The Lords found a thirlage constituted by the contract 1633, and possession thereupon proved by the above voluntary acts of coming sometimes to the pursuer's mill, though the defender was never interpellated or hindered to go to other mills, when he pleased, nor paid dry multure when he went by the pursuer's mill, in respect of his author's anterior obligation to come to the mill. But because the pursuer did found upon the depositions aforesaid, to instruct possession upon the bond of thirlage, and that bond mentions good services as the conditional terms of coming to his mill, the Lords explained these good services by the depositions, viz. that the defender should not be liable to knaveship, and that his loads should be carried to and from the mill upon the mill-horses.

*Fol. Dic. v. 2. p. 373. Forbes, p. 628.*

1724. *July 1.*WILLIAM FORBES, Merchant in Aberdeen, *against* DAVID WILSON of Finzeach.

No. 8.

MR. WILSON's predecessors having a house adjoining to a garden now belonging to Mr. Forbes, they obtained from his authors, in the year 1644, a tolerance or

The tolerance of a specified number of