tion, seeing the charger will not insist. For some thought there might be cases where a suspender ought not to be put to find caution, where he had a relevant reason, and that likewise proven as a discharge of the debt. But it was ANSWERED,—There was still need of caution, seeing the discharge may be quarrelled as false; but, if a decreet be extracted *spreto mandato*, after a stop given, I think it may suspend without caution.

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1694. *November* 18. SINCLAIR of HADDOWS-MILL *against* DUFF of BRACO.

SINCLAIR of Haddows-mill, against Alexander Duff of Braco, about a thirlage. Sinclair's active title was a charter of the mill, granted by Frendraught, bearing, *per expressum*, the multures of these lands of Turtrie, now belonging to Braco. His defence was,—My lands never belonged to Frendraught, nor lay within his barony, but are a part of the barony of Rothemay; and my authors, long prior to 1632, which is the date of that charter of thirlage, were infeft *cum molendinis et multuris*, and so not liable.

ANSWERED for the pursuer,—That, as he had a title of prescription, (though it were *a non domino*,) so he had forty years' possession since, which, by the Act of Parliament 1617, was sufficient; unless they founded on interruptions, not of a few acts of withdrawing, but public and solemn.

The Lords found, That, in prescribing of property, any title, though never so null and invalid, was sufficient, if clad with forty years' uninterrupted possession; but, in thirlage, (where the lands are not a part of the barony,) any withdrawing was enough to interrupt, seeing it was *actus meræ facultatis*, and their own mill was then ruinous; whereas, in other cases, it must be a forbearance for a considerable tract of time together. But here, where the thirled lands are no part of the barony, and that it is not a King's mill, the same acts that constitute may also take it off. See *June* 29, 1665, *Heritors of Keithock's Mill* against *The Feuars*, where they are found thirled to the mill, because within the barony, and had paid insucken multure.

There were other acts of interruption proponed here, as also upon an agreement. But the Lords decided on the first point.

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1694. *November* 18. MARGARET NISBET *against* BAILIE FALL in Dumbar.

THE Lords would not grant her a farther diligence against witnesses not contained in the first diligence, though she offered to make faith they were newly come to her knowledge; because a pursuer should be *instructus*, and know his own probation; and, where he craves a new one, there is fear of subornation. Yet it has been allowed in some cases.

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