

canons. And the design of the act of Parliament 1633, being only to ease the heritor from the trouble of having his tithes drawn by a third person, *salvo jure cujuslibet*, it did notways evacuate thirlage constituted *ab ante*; again, the Abbot, who was titular, having thirled the *ipsa corpora* of the tithes, that thirlage became *onus reale*, which affects the *corpora* in the hands of any immediate in-tromitter therewith, and consequently must burden Bimmerside who possesses stock and tithe by a tack.

No 38.

Duplied for Bimmerside; The decisions cited by Newmains are not to the purpose; for that betwixt Grant and Grant had many specialties, and was founded on possession by charter and sasine subsequent to a very ancient tack; and in the practick 1675, betwixt the Countess of Murray and Weems, the 19 years tack was a temporary title; which, though it may be continued *per tacitam relocationem*, the master's possession could not be understood to continue after his neglect 40 years to exact the tack-duty; especially seeing the lands were possessed by singular successors, who could not be presumed to possess by virtue of a tack they were not bound in law to know.

THE LORDS found, That Bimmerside's faculty of building a mill within his own bounds, conform to the contract 1591, did not prescribe; and that he might build, though both the ends of the mill-dam were not on his own ground, to free him from the thirle of such corns as can be grinded at his own mill; but found the thirle to the Mill of Dryburgh continues still in the terms of the contract, whenever Bimmerside's own mill cannot grind; and that the Abbot's feu-charter of the Mill of Dryburgh 1562, having thirled the tithes of the parish of Mertoun (within which the lands of Bimmerside lie), the building of the mill-conform to the contract, can operate no liberation from the thirle of the tithes.

Forbes, p. 147.

1712. January 12.

JUSTICES of the PEACE of AYRSHIRE against TOWN of IRVINE.

THE LORDS over-ruled the plea, that the exercise of the power of re-pledging was *meræ facultatis*, and found that the negative prescription *non utendo* took place.

Fol. Dic. v. 2. p. 99. Fount.

** This case is No 17. p. 9398, voce OATH OF PARTY.