No. 110.

effect whatever. In charters from subjects, they are regarded in the same light, if it appear that the possessors of the thirled lands have been in the practice of attending the mill, after the date of the charter. So it is laid down by Lord Stair, p. 305. § 24.; and so it was found, July, 19, 1758, M'Nab, No. 102. p. 16041.; and again, November 17, 1759, Yeaman, No. 103. p. 16044. The words *pro omni alio onere* respect only burdens that may affect the lands, not such as may affect the fruits; Bankton, v. 1. p. 688. § 52. & 53.

The proof, in this case, would be sufficient even to constitute a thirlage, especially as the mill belonged to churchmen. But as the question here is not with regard to the constitution of a thirlage, it is unnecessary to enter into a nice discussion of the proof. The thirlage having been constituted before, the proof is only to show, whether it was meant by these words in the charter to discharge the thirlage Lord Stair says, that, in such case, usage of grinding the corns at the mill for seven years only, immediately subsequent to the date of the charter, is sufficient to show that an immunity was not designed. Here the attendance on the mill is proved for near 40 years; and, taking it altogether, seems quite irreconcileable with the supposition, that it was the understanding either of the granter or grantee that the thirlage was discharged by this charter.

Observed from the Bench: In the case of M'Nab, the Court was equally divided, the President having been against the judgment.

"The Lords assoilzied the defender."

Act. *Armstrong.* Alt. *Chas. Brown.* Clerk, *Kirkpatrick.*

Fac. Coll. No. 83. *p.* 147.

*** The pursuer having appealed, the House of Lords, January 28, 1774, "ORDERED and ADJUDGED, That the appeal be dismissed, and that the interlocutors therein complained of be affirmed, with £.100 costs."

1769. *February* 16. CHALMERS *against* WILSON.

No. 111.
Grounds turned into grass.

Among sundry articles of deduction pleaded by the tacksman of a mill, one was, that the proprietor having bought up many of the tacks upon the estate, kept great part of it in grass, which was in tillage when the mill was let, whereby there was a short-coming of the multures, in contemplation of which he had agreed to pay the rent.

Answered: The profits of a mill being casual, the tenant is understood to run his risk of a diminution, upon account of the chance of increase; and it has been decided, that the proprietor of a mill does not incur the warrandice of the tack, in consequence of the tenants throwing their grounds into grass; July, 1731, M'Fadzen *contra* Earl of Cassilis, No. 73. p. 16016.

"The Lords repelled the claim of deduction."

Act. *Rolland.* Alt. *Blair.*

G. F. *Fac. Coll. No.* 87. *p.* 338.