Thirling tenants by their tacks, is no proper manner of constituting thirlage, so as to make it a real servitude, and binding on singular successors; see Erskine, *B. 2, tit.* 9, § 21. It is considered as any other personal burden on the tenants, and expires with their tacks.

1776. *July* 3. BELL of GRIB *against* GIBSON.

EVERY presumption is in favour of liberty. It has however been argued that thirlage to the mill of a barony was more easily to be presumed than in other cases, or, at least, more slender evidence of it sustained; and, in support of this, has been quoted, 17*th July* 1629, *Laird of Newliston*, observed by Durie. But this is a single decision, and was never so found again. On the contrary, see 12*th July* 1621, *Douglas*; and 13*th July* 1632, *E. of Morton.* By these decisions it is established, that there is no general presumption in law of the lands in a barony being thirled to the mill thereof, without any constitution of a thirlage whatever. So argued.

And in a reclaiming petition and answers for the same parties, —— August 1776.

TITLE TO PURSUE.

IT has been often contested, how far burgesses have a title to pursue the Magistrates of a royal burgh, to account in a general way for mismanagement of the revenue of the burgh. (It was for this reason that a process at the instance of Burns and other burgesses of Kinghorn, against the Magistrates for malversation and mismanagement, was dismissed. It resolved into a general count and reckoning, and fell properly, in terms of the statute 1535, to be discussed in Exchequer.) But three things seem clear, *Primo*, That, if the burgh is not a royal burgh but a burgh of barony or regality, their title is undoubted, because the law, which seems to point out a different method in royal burghs, does not extend this to other burghs; and, *Secondly*, That where there is any particular dilapidation of the heritable subjects of the burgh, there the burgesses have a title to reduce the transaction, by an action before the Court of Session; see *Johnston* against *Magistrates of Edinburgh, anno* 1735, 1 *New Coll.*, 3*d July* 1752, and 30*th June* 1754. And even, *Thirdly*, the same is competent where any particular dilapidation of the revenue of the burgh is condescended on, though not of its heritage. Of this last an instance occurred,

1772. JOHN BAXTER, Provost of Cupar, and OTHER BURGESSES, *against* MONRO.

IN that case, the Magistrates and Council had, by an act, given £40 to Monro, a vintner in the burgh, upon the narrative of good services to the town. Of this act Provost Baxter and others obtained suspension; and the Lord Kennet, Ordinary, having suspended the letters *simpliciter*, the Lords, upon bill and answers, wherein the point of the title was fully discussed, adhered. In this instance, it is true, the challenge was brought at the instance of some Magistrates and Councillors of the burgh: but this does not seem to make any difference.

JAMES WILSON and OTHERS *against* JOHN STORY and OTHERS.

THE town of Paisley, a burgh of barony, possessed of the superiority of the lands of Carriagehill, and which entitled to a vote in the county election, disponed it to one of their burgesses in liferent; for which he paid them a valuable price, which, it was alleged, was equal to the purchase. Of this a reduction was brought at the instance of another burgess, who was willing to have given more for it, with concurrence of others of his brethren. His title was disputed. Lord Gardenston, Ordinary, 8th July 1774, repelled the objections to the title, but, in a subsequent interlocutor, he reserved them to the discussing the reasons. The reasons came to be discussed before Lord Justice-Clerk, and, upon his report, "The Lords, February 1775, repelled the reasons of reduction, assoilyied the defender, and found expenses due."

There was no special interlocutor repelling the objections to the title; but they seemed untenable, *first*, Because Paisley was a burgh of barony, and therefore any provision which law had made to prevent the dilapidation of the common good of royal burghs, did not apply here; and, *secondly*, The Act challenged was an alienation of an heritable subject, which could be reduced nowhere except in the Court of session.

See COMMUNITY.

TOWN OF EDINBURGH,—See EDINBURGH.