

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, *17th July 1629, Laird of Newliston*, observed by Durie. But this is a single decision, and was never so found again. On the contrary, see *12th July 1621, Douglas*; and *13th 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., 3d July 1752*, and *30th June 1754*. And even, *Thirdly*, the same is competent where any particular dilapidation of the revenue of the burgh is condiscended on, though not of its heritage. Of this last an instance occurred,