

S E C T. VII.

What Title requisite for Thirlage?

1541. *March 14.* Mr ALEXANDER OGILVIE *against* TENANTS of N.

No 111.

GIF ony man clamis thirlit multuris of ane uther, he aucht and sould libel ane titill, quhairby he sould have the samen; because, albeit ane, of his awin free motive will, be in use to cum and grind his corn at ane uther man's milln, and pay multure thairfoir, he sould not thairby be astrictit to pay ony thirlit multure; quia, ex actu mere voluntario, etiam per centum annos, non inducitur consuetudo, nec jus alteri acquiritur.

Fol. Dic. v. 2. p. 105. Balfour, (Mills) No 10. p. 495.

* * Sinclair reports this case.

1541. *March 13.*—IN a cause moved by Mr Alexander Ogilvie against certain tenants, for spoliation from him of their thirle multures, the libel was cassen, because the said Mr Alexander libelled not the title whereby he claimed the said multures to pertain to him, and ex sola consuetudine utendi ad molendinum alienum dominus illius molendini non potest pretendere jus in multuras, nec cogi potest nolens venire in posterum; quia, ex actu meræ voluntatis, etiam per centum annos, non inducetur consuetudo, nec alteri jus acquiritur; and so jura hæc incorporalia et servitutes non possunt sine titulo possideri.

Sinclair, MS. p. 17.

1610. *December 4.* FENTON *against* TENANTS.

No 112.

HE who is infest in a mill, with the multures of the lands of a barony, pursuing for the multures of abstracted corns, and especially of corns *quæ erant invicta*, and tholed fire and water in the barony whereof he alleged he had had possession according to his infestment relative to the multures used and wont, the lords would not sustain his summons for corns inbrought within the barony, and tholed fire and water, unless he would either allege infestment *per expressum*, or an act of thirlage before the defender's feus.

Fol. Dic. v. 2. p. 105. Haddington, MS. No 2033.