

No. 123.

1793. February 26. JARDINE against DOUGLAS, SHARP, &c.

The servitude of thirlage was, in this case, found to have been transferred, although the proprietor of the mill was no party to the action of division.

Fac. Coll.

* * This case is No. 9. p. 14152. voce RUNRIDGE.

1798. February 13.

The MARQUIS of ABERCORN and WILLIAM LANGMUIR, against The MAGISTRATES and TOWN-COUNCIL of PAISLEY, LORD DOUGLAS, and Others.

No. 124.

A thirlage of *invecta et illata* over a burgh, found not to extend to malt imported in a ground state.

A thirlage of *grana crescentia* does not comprehend wheat, none having been sown on the lands at the time of their astringion.

In 1490, George Shaw, abbot of the monastery of Paisley, granted a charter in favour of the Magistrates and community, which, besides erecting it into a burgh of barony, contained a conveyance of a variety of lands in their favour. The *reddendo* provided, "That the said Provost, Bailies, burgesses, and community of the said burgh, and their successors, shall come with their grain whatsoever, in so far as they shall grind, to our mill of Paisley, and not to any other mill whatsoever, paying therefor to us multure to a thirty-one dish only, as men abiding furth of our lands, for all other burden, exaction, question, demand, or secular service which can any manner of way be justly exacted or required by any manner of persons, furth of the said burgh and barony, tenements, mansions, yards, and acres lying within the said burgh, with the pertinents."

Certain lands belonging to Lord Douglas and others, were also liable to a thirlage of *grana crescentia* to this mill, which now belongs to the Marquis of Abercorn.

In 1795, his Lordship and William Langmuir, lessee of the mill, brought a declarator of thirlage, concluding, *inter alia*, 1st, That the inhabitants of Paisley should pay dry multure for malt ground before it was brought into the burgh: 2dly, That those defenders, liable in a thirlage of *grana crescentia*, are bound to grind at the mill the wheat growing on their lands, as well as their other grain.

A proof was led, from which it appeared, that malt brought into the town before it was ground, to be used there, had uniformly been carried to the mills in question, when there was occasion to grind it; that dry multure had sometimes been paid for ground malt brought into Paisley; and that some of the persons astringed to the mill, had brought their wheat to be grinded there, under an impression that they were bound to do so; but in neither of these last cases, had the practice been by any means universal. The pursuers further admitted, that at the time the lands were astringed, no wheat was raised on them; and that no proper machinery for manufacturing it had been erected at the mill till about thirty-five years ago.

The Court, after a hearing in presence, *inter alia*, found 1st, That malt, when imported into the burgh of Paisley, and when there is occasion to use it there in