

ANNO TRICESIMO NONO

GEORGII III. REGIS.

CAP. LV.

An Act for encouraging the Improvement of Lands ſubject to the Servitude of Thirlage, in that Part of *Great Britain* called *Scotland*.

[13th *June* 1799.]

Preamble. WHEREAS it is found by Experience, that the Servitude of Thirlage, and Right of Mill Services incident thereto, in that Part of *Great Britain* called *Scotland*, are very unfavourable to the general Improvement of the Country, by checking the Induſtry of the Occupiers of the Ground, and by occaſioning troubleſome and expenſive Litigation; and that it is highly expedient that it ſhould be allowed to Perſons ſubject to ſuch Servitude to compenſate or to commute the ſame by a fixed annual Payment, in Lieu and Satisfaction of the ſaid Right of Thirlage, and of all Services, Preſtations, and Reſtrictions, thereto incident or pertaining, and in ſome Caſes to make an entire and complete Purchaſe of the ſame for a fair and adequate Price: Therefore be it enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That, from and after the paſſing of this Act, it ſhall and may be lawful for the Proprietor or Proprietors of any Lands or Tenements thirled or aſtricted to any Mill, in that Part of *Great Britain* called *Scotland*, or to the

Proprietors of Lands thirled, or of Mills to which Lands are thirled,

may apply to have the Thirlage commuted, to the Sheriff or Steward Depute, or Subſtitute, who ſhall proceed as herein directed.

the Proprietor of any Mill to which the Lands or Tenements of any other Perſon or Perſons are thirled or aſtricted, who ſhall be deſirous to have ſuch Thirlage or Aſtriction changed or commuted into ſuch Annual Payment, to apply to His Majeſty's Sheriff or Steward Depute of the County or Stewartry in which ſuch Lands or Tenements, and Mills, are ſituated, or to his Subſtitute, by a Petition, ſetting forth ſuch his or their Deſire, and ſpecifying the Lands and Tenements ſo thirled, which he or they is or are deſirous ſhould be freed from ſuch Thirlage, and the Mill or Mills to which ſuch Lands or Tenements are ſo thirled, and alſo the Nature of the Thirlage, the ſeveral Species of Corn or Grain over which it is extended, the Quantity of Multure paid for grinding every Sort of Grain, the Services dependant on the Right, and the Total Amount of the Multures and other Dues claimed or allowed to be due; which Petition the ſaid Sheriff, or Steward Depute or Subſtitute, ſhall order to be ſerved on the other Party or Parties intereſted in the ſaid Thirlage, and on the Tenant or Tenants of the Mill or Mills deſcribed in the ſaid Petition, and ſhall alſo cauſe an edictal Citation to be made of all Parties having or pretending to have Intereſt in the ſaid Thirlage, at the Church or Churches of the Pariſh or Pariſhes within which the Mill, and alſo the Lands thirled thereto, are ſituated; and the Party or Parties on whom ſuch Petition is ſerved ſhall, within Forty Days after ſuch Service and Citation, if within *Scotland*, or if furth thereof, then within Sixty Days, lodge with the Sheriff or Steward's Clerk their Anſwers to the Petition, (and if any of the ſaid Subjects are entailed, on the next Subſtitute Heir of Entail within the Kingdom, who would ſucceed failing the Heir in Poſſeſſion and his Family), and ſhall therein ſet forth all Objections they may have, either to any further Procedure or to the Matter of the ſaid Petition; and they ſhall alſo ſtate every Claim, Demand, or Deduction, which they are either then or afterwards to make or crave; which Petition and Anſwers the Sheriff, or Steward Depute, or his Subſtitute, ſhall immediately take into Conſideration, and within Thirty Days ſhall make an Order or Decree finding and declaring the preciſe Matters in the ſaid Petition and Anſwers, which are relevant to paſs to the Knowledge of a Jury in Manner after mentioned, and Twenty Days from the Date of ſuch Order or Decree having elapſed, or in caſe of any Advocation, Suſpenſion, or other Stay, by the Authority of a ſuperior Court, within Ten Days after ſuch Advocation, Suſpenſion, or other Stay, has been diſcuſſed and removed, the Sheriff, or Steward Depute, or his Subſtitute, ſhall pronounce an Interlocutor, appointing a Jury to be ſummoned on a certain Day, to be expreſſed in the ſaid Interlocutor, at the Diſtance of not leſs than Thirty and not more than Forty Days from the Date of ſuch Interlocutor, to give their Verdict or Determination on the Matters contained in the ſaid Petition, and Anſwers and Decree made thereon by the ſaid Sheriff, or Steward Depute or Subſtitute, or by a ſuperior Court, in ſuch Manner, and for ſuch Purpoſe as herein-after is directed; and the ſaid Sheriff, or Steward Depute, or his Subſtitute, is hereby directed and required to ſummon an Aſſize of at the leaſt Twenty-one impartial and diſintereſted Men, each of whom ſhall be an Heritor or Tenant of Land, paying Thirty Pounds Sterling of yearly Rent within the ſaid County or Stewartry, or in the Caſe of Heritors occupying their own Lands, then of Thirty Pounds *Scots* of valued Rent, on ſuch Day as ſhall be mentioned in the Interlocutor aforeſaid; which Aſſize being called on the ſaid Day, the Number of Perſons then attending on the ſaid Aſſize ſhall be reduced

to Nine by each Party, (that is, the Proprietor of the Mill on the one Part, and the Proprietor or Proprietors of the thirled Lands or Tenements on the other), ſtriking off alternately, beginning on the Part of the Proprietor of the Mill, or in caſe of any of the Parties not appearing, by the Sheriff, or Stewart Depute or Subſtitute, ſtriking off for and on Behalf of ſuch Party, till the Number be reduced to Nine, who ſhall be ſworn, and conſtitute a Jury for the Determination of the annual Value of the Thirlage Services and Preſtations thereto annexed, which is ſubmitted to their Conſideration; before which Jury, and the ſaid Sheriff, or Steward Depute or Subſtitute, the ſaid Petition, and Anſwers and Decree, together with ſuch Evidence as any of the Parties may incline, ſhall be laid; which Evidence ſhall be taken in Writing, and remain for Four Years at leaſt upon Record in the Court where it was taken; and after deliberating thereon, and hearing Parties and their Procurators, if they ſhall deſire to be heard, and upon a due Conſideration of all the Circumſtances of the Caſe, the ſaid Jury ſhall, by their Verdict or Determination, fix and aſcertain the Amount of ſuch Annual Payment, in Grain of ſuch Kinds, and in ſuch Quantity and Amount, as to the ſaid Jury ſhall appear to be a juſt, fair, and equal Value and Compenſation for the ſaid Right of Thirlage, and all and every Service, Preſtation, or Reſtriction thereto annexed or incident; of which Verdict or Determination an Abbreviate ſhall be regiſtered by any of the Parties in the General Regiſter of Saſines at *Edinburgh*, or the particular Regiſter for the ſaid County or Stewartry, within Sixty Days after the pronouncing of ſuch Verdict or Determination: Provided always, That nothing herein contained ſhall invalidate or infringe the Right competent to the Proprietor of any Mill for ſupporting and repairing the Mill Dam, and the Ledd or Aqueduct conducting the Water to ſuch Mill, by taking Stones, Turf, or other Materials, from the Thirled Lands of any neighbouring Heritor along which the ſaid Aqueduct paſſes, or of deepening or clearing the ſame, conform to Uſe and Wont.

Act not to infringe the Right of taking Materials for ſupporting Mill Dams, &c.

II. And whereas the ſaid Petition and Anſwers may contain Matters of Law touching Rights of Thirlage, whereto the ſaid Sheriff, or Steward Depute or Subſtitute, has not a competent Juriſdiction; be it therefore enacted, That it ſhall be lawful to the ſaid Sheriff, or Steward Depute or Subſtitute, and they are hereby empowered and authorized to decide and determine, by their Order or Decree, on the ſaid Petition and Anſwers, all Queſtions in Law therein contained, reſpecting the Nature, Quality, and Extent of the Thirlage to be valued, and Services, Preſtations, and Reſtrictions thereto incident, or the Claims, Demands, and Deductions, made or craved by either of the Parties; any Law or Practice to the contrary notwithſtanding.

Sheriff, &c. may determine all Queſtions in Law contained in Petitions and Anſwers.

III. Provided always, That it ſhall not be lawful to the ſaid Sheriff, or Steward Depute or Subſtitute, to pronounce any Judgement or Decree, finding or declaring Lands to be thirled or aſtricted to a Mill, where the Proprietor of the Lands denies the Exiſtence of any ſuch Right of Thirlage, unleſs the other Party produce an Extract of a Decree of Declarator pronounced by the Court of Seſſion, or ſufficient Evidence thereof in Proof of his Right, and that the ſaid Sheriff, or Steward Depute or Subſtitute, ſhall (ſuch Production not being made) diſmiſs the Petition in ſo far as regards the Lands which are denied to be thirled, and

Sheriff, *etc.* not to declare Land thirled, if the Proprietor deny it, unleſs the other Party produce Proof of the Right.

and proceed only to the Valuation of the Thirlage of thoſe Lands which are confeſſed to be thirled, as in Manner is before directed.

After Three Years Regiſtration of the Verdict, it ſhall not be altered, &c.

IV. And be it ſpecially enacted, provided, and declared, That after the Expiry of Three Years from the Regiſtration of the Verdict of the Jury, the ſaid Verdict, and the Proceedings had relative thereto, ſhall not be reduced, ſet aſide, reviewed, altered, or amended by the Court of Seſſion, or any other Judicatory, for any Neglect of the Proviſions herein contained, or for any Informality or Error, or for any other Reaſon or Pretext whatever; and if any Party ſhall purſue any Proceſs of Reduction of the Verdict of the Jury, or other Proceſs for ſetting the ſame aſide, or for altering or amending the ſame, in the Court of Seſſion, and ſhall fail in ſuch Purſuit or Proceſs, ſuch Party proſecuting as aforeſaid ſhall be liable to the other Party or Parties in full Coſts of Suit.

After Verdict all Reſtrictions to ceaſe, and the Proprietor of the Mill ſhall be bound to receive the Compenſation in Corn, or its Value in Money, at the Option of the Payer.

V. And be it further enacted, That after ſuch Verdict and Determination as aforeſaid, the Servitude of Thirlage, and all Services, Preſtations, and Reſtrictions, pertaining or any way incident thereto, ſo valued by the ſaid Jury, ſhall ceaſe to be exigible from, or binding upon either or any of the Parties, but that in lieu thereof the ſaid Proprietor or Proprietors, Occupier or Occupiers of the thirled Lands or Tenements, ſhall be bound and obliged to pay, and the Proprietor of the Mill to which the ſaid Lands or Tenements are thirled, ſhall be bound and obliged to receive annually, at the Mill where the Multure under the former Servitude of Thirlage was in uſe to be paid, or at ſome other convenient Place to be fixed by the Jury, ſuch Quantity or Amount of Corn or Grain, of ſuch Kind or Sort, Kinds or Sorts as the ſaid Jury ſhall in Manner aforeſaid determine to be a juſt Compenſation or Equivalent for ſuch Right of Thirlage, or, in the Option of the Payer, the Value of ſuch Corn or Grain in Money, according to the Value or Price put upon ſuch Kind or Kinds of Corn or Grain by the Fiars of the County in which the Grain is payable, for the Year within which ſuch Payment is due.

Verdict not to be delayed by Abſence of any Perſons intereſted, but the Day for taking it may be adjourned, on ſufficient Reaſon being ſhewn.

VI. Provided always, and it is hereby further enacted and declared, That ſuch Verdict or Determination ſhall not be prevented or delayed by the Abſence or Non-attendance of any Perſon intereſted in ſuch Thirlage, but that the Jury ſhall proceed on ſuch Evidence as ſhall be produced to them by any of the Parties then and there attending, and pronounce ſuch Verdict and Determination as aforeſaid, which ſhall be as valid and effectual, to all Intents and Purpoſes, as if all the Parties intereſted therein had attended, and been heard in relation thereto; but it is alſo provided, that if any of the Parties ſhall ſhew ſufficient Reaſon for adjourning the ſaid Day appointed for taking the Verdict of the Jury, it ſhall be lawful for the ſaid Sheriff, or Steward Depute or Subſtitute, to make ſuch Adjournment to any Day within Thirty Days from the Day firſt appointed, the Party praying an Adjournment always defraying all Expences thereby incurred.

Annual Payment in lieu of Thirlage to be made at *Candlemas*.

VII. And be it further enacted, That the Annual Payment herein above directed to be made, in Lieu and Satisfaction of the ſaid Servitude of Thirlage, ſhall be payable at the Term of *Candlemas* in each Year, the Firſt Payment to be made at the Term of *Candlemas*, immediately ſubſequent

ſubſequent to the Date of the Verdict or Determination of the ſaid Jury; the Amount of which Firſt Payment ſhall be fixed by the ſaid Jury, according to ſuch Proportion as they ſhall judge reaſonable on the whole Circumſtances of the Caſe.

The Commutation for Thirlage to Mills let on Leaſe ſhall be full Compenſation to the Leſſees; and where paid by Proprietors of Lands on Leaſe thirled, the Leſſee to pay the Proprietor.

VIII. And be it further enacted, That where the Mill or Mills aforeſaid, with the Rights of Thirlage thereto annexed, are let to Tenants under Tacks or Leaſes, the Annual Payment in Grain or Money, ſo as aforeſaid to be paid as a Commutation or Equivalent for the Right of Thirlage annexed to ſuch Mill, ſhall, and the ſame is hereby declared to be payable, during the Term or Currency of ſuch Tack or Leaſe, to the Tenant or Leſſee of ſuch Mill or Mills, and ſuch Annual Payment ſhall be to ſuch Tenant or Leſſee, Tenants or Leſſees, full Compenſation for or in Lieu and Satisfaction of all Multure, Mill Services, or other Rights or Servitudes pertaining or incident to the ſaid Right of Thirlage let to him or them by ſuch Tack or Leaſe, ſuch Tack or Leaſe, or any Condition or Preſtation therein contained notwithſtanding; and where the Lands of the Servient Tenement or Eſtate thirled are let in Leaſe to Tenants, and the Proprietor ſhall pay the Annual Commutation or Equivalent, the Leſſees ſhall in that Caſe be obliged to make Payment to the Proprietor of a Proportion of the ſaid Annual Commutation or Equivalent, correſponding to the Rent of the Lands let in Leaſe compared with the total Amount of Rent payable by the whole Lands thirled, and that the ſaid Proportion of the ſaid Annual Commutation or Equivalent ſhall be recoverable by the Proprietor in the ſame Manner in which he is entitled to recover his Rent.

On Objection of Tenants paying One Fourth of the Rent of Lands thirled, a Jury to divide the Commutation.

IX. Provided always, and be it enacted, That if the Proportion by Rent ſhall be objected to by Tenants paying One Fourth or more of the Rent of the Lands thirled, the ſaid Jury ſhall then divide according to the beſt of their Judgement, Information, and Belief, the different Parts of the Commutation to be paid by the ſeveral Tenants, according to the Value of Multures, Services, and Preſtations legally exigible from the ſeveral reſpective Farms occupied or poſſeſſed by them; or if the Parties are not then prepared, the Sheriff or Steward Depute, or his Subſtitute, is hereby authorized and required, at the Requeſt and Deſire of the above-mentioned Proportion of the Tenants, again to convene the aforeſaid Jury, in Manner and with Notice as above directed, and that on any Day within the Space of Two Months from the Date of their Firſt Award, when the ſaid Jury ſhall meet and make ſuch Diviſion.

Commutation not to give Claim to the Mill Proprietor to Relief from the Land Tax, nor to affect Right of Freehold.

X. And whereas the Annual Payment to be adjudged under this Act to the Proprietor of a Mill, in lieu of the Multures, Mill Services, and other Rights, from which the Lands thirled are to be thereby relieved, is meant and underſtood to be of equal Value, and a full Compenſation for the Diſcharge thereof, and in no ways to take from or diminiſh the Value of his Right as Proprietor, it is further hereby enacted and declared, That the Diſcharge of the Multures, Mill Services, and other Rights belonging to a Proprietor of a Mill, as to the Whole or any Part of the Lands aſtricted to it, and the Subſtitution of an Annual Payment by way of Compenſation in place thereof, in the Manner above provided for, ſhall afford to ſuch Proprietor no Ground or Pretence for claiming Relief from any Part of the Ceſs or Land Tax payable by him in re-

ſpect thereof, either where ſuch Mill ſtood ſeparately valued in the Ceſs Books, or where it was included in a joint or cumulo Valuation with other Parts of his Property; and for the ſame Reaſon, that it ſhall not in anyways affect or impair any Right of Freehold, or Qualification to elect or be elected as a Member of Parliament, ariſing from or founded upon it, either where the Mill with its Mill Lands and Multures of itſelf affords ſuch Qualification in reſpect of its Valuation or old Extent, or where it makes Part of a Tenement which forms ſuch Qualification, either on its Valuation or as ſeparately retoured of an Extent ſufficient for that Purpoſe.

Thirlage of the *Invecta et Illata* may be purchaſed:

XI. And whereas there is a Kind of Thirlage known in the Law and Practice of *Scotland*, called *a Thirlage of the Invecta et Illata*, to which ſundry Towns, Burghs, Burghs of Barony, Villages, or other Places, in that Part of the Kingdom, and the Inhabitants thereof, are ſubject, which Thirlage it is expedient to allow to be purchaſed by the Perſons ſubject to the ſame, be it therefore enacted, That if any Inhabitant or Inhabitants of ſuch Town, Burgh, Village, or Place, ſhall be deſirous to purchaſe an Exemption from the ſaid Servitude of Thirlage, and all and every the Services and Preſtations incident thereto, to which the whole Town, Burgh, Village, or Place, is liable from the Proprietor of ſuch Mill or Mills entitled to the ſame, it ſhall be lawful and competent to them to apply, in Manner above mentioned, to the Sheriff or Steward Depute of the County or Stewartry in which ſuch Town, Burgh, Village, or Place is ſituate, who ſhall take ſuch Proceedings, and ſummon a Jury in ſuch Manner as is herein-before particularly directed, which Jury ſhall by their Verdict fix and determine the full Value in Money of ſuch Right of Thirlage in Perpetuity, on which Verdict and Determination the ſaid Sheriff, or Steward Depute or Subſtitute, ſhall pronounce Decreet againſt the Perſon or Perſons ſo petitioning or applying to him as aforeſaid, for the Sum ſo fixed and determined by ſuch Jury, on Payment of which to the Proprietor of the Mill, ſuch Town, Burgh, Village, or Place, or ſuch Inhabitant or Inhabitants thereof, formerly ſubject to ſuch Thirlage, ſhall thenceforth be for ever freed and relieved from the ſame.

Such Thirlage may be purchaſed notwithſtanding the Mill be held under a Deed of Entail, on certain Conditions.

XII. And it is hereby further enacted, That ſuch Proceeding may take place, and ſuch Exemption be purchaſed in Manner aforeſaid, notwithſtanding the Mill or Mills, to which ſuch Burgh, Town, or Village is thirled, be held by the Proprietor or Proprietors thereof under a Deed or Deeds of Entail, provided that the Price paid for the ſame, in virtue of the Determination of the Jury and Decreet of the Sheriff hereby directed, ſhall be ſettled and ſecured in like Manner as is directed in the Caſe of Superiorities ſold to the Vaſſals of entailed Eſtates, by an Act, made in the Twentieth Year of the Reign of His late Majeſty King *George* the Second, intituled, *An Act for taking away the Tenure of Ward Holding in* Scotland, *and for converting the ſame into Blanch and Feu Holdings; and for regulating the Caſualty of Non-entry in certain Caſes; and for taking away the Caſualties of Single and Life Rent Eſcheats incurred there by Horning and Denunciation for Civil Cauſes; and for giving to Heirs and Succeſſors there a ſummary Proceſs againſt Superiors; and for diſcharging the Attendance of Vaſſals at Head Courts there; and for aſcertaining the Service of Tenants there; and for allowing Heirs of Tailzie there to ſell Lands to the Crown, for erecting Buildings and making Settlements in the Highlands.*

20 *Geo.* II, Cap. 50.

XIII. And whereas it may happen, that a Mill and ſome of the Lands thirled to it may be within different Counties or Stewartries; be it enacted, That in ſuch Caſe the Application ſhall be made to the Sheriff or Stewart of the County or Stewartry in which the Mill is ſituated, before whom the Parties concerned who live without his Juriſdiction may be cited by virtue of Letters of Supplement in common Form.

If Mill and Lands be within different Counties, Application to be made to the Sheriff where the Mill is ſituate.

XIV. Provided always, and it is hereby expreſsly enacted and declared, That nothing herein-before contained ſhall apply to the Caſe where a permanent Annual Payment, either in Money or Grain, is already fixed or eſtabliſhed under the Name of Dry Multure, in lieu of the Servitude of Thirlage; but reſerving nevertheleſs to either Party, as well the Proprietor of the Dominant as of the Survient Tenement, to apply in Manner herein-before directed for commutating or compenſating by ſuch fixed Annual Payment as herein-before mentioned, all Mill Services and other Preſtations and Reſtrictions, if any ſuch are exigible, over and above the Sum of Money or Grain payable in Name of Dry Multure as aforeſaid.

Act not to extend where Dry Multure is fixed.

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