

No 4. though he be not expressly restricted and prohibited in his charter; and therefore ordain the said mill to be demolished; but find that the defender is not obliged by the nature of his thirlage to go to the pursuer's wind-mill, but only to his water-mill to which he is thirled; and that notwithstanding of the alleged defects of the mill, find the defender liable for the multure of the abstracted corns, except those that are acknowledged by the pursuer; but find him liable for the hynd bolls; but declare that in case the time of the abstraction, the mill of the barony be not in condition to serve, then find the defender liable for the multure, but not for the small duties due for service.

M'Culloch having reclaimed against this interlocutor; and it being of new reported, how far one might build a mill within another's thirlage, they reviewed the affair, but still adhered to their former interlocutor, on the 13th March 1684. See THIRLAGE.

Fol. Dic. v. 1. p. 574. Fountainball, v. 1. p. 276.

* * * Harcase reports this case :

IN a declarator for demolishing of a mill, as newly built upon thirled lands, in prejudice and emulation of the thirlage,

Alleged for the defender; That he, as *dominus* of his lands, might build a mill thereon for grinding the corns of his other lands that were not thirled, and to serve for out-sucken multure, which is the opinion of Craig, lib. 2. dieg. 8. and the pursuer had no more prejudice by the building of the mill upon the thirled lands, than if it had been erected upon contiguous landsunthirled.

Answered; The thirled lands not being disposed to the defender *cum molendinis*, he ought not to build any mill thereon, to give a colour or occasion for abstracting of multures. And by the custom of baronies, house-mills and querns are always broke.

“ THE LORDS sustained the answer, and decerned the mill to be demolished.”

Harcase, (MULTURES.) No 725. p. 205.

1695. February 28. CRAWFORD of Carsburn against SIR JOHN SHAW.

No 5.
Found in
conformity
with the
above.

THE LORDS determined the controversy betwixt Crawford of Carsburn and Sir John Shaw of Greenock, about the thirlage to Greenock's mill; and they adhered to their former interlocutor, declaring the thirlage in Greenock's favour, notwithstanding the prior resignation and infefment in Carsburn's person, *cum molendinis et multuris*, and the practise cited in 1691, Newbyth *contra* Whitekirk; See THIRLAGE. Then Carsburn insisted on that conclusion of his summons, seeing no more was thirled but his *grana crescentia*, and that he had a

burgh of barony wherein corn was daily imported, of the growth of other lands, that *quoad invecta et illata* he might build a mill of his own, to which it might come, and which could not be construed to be in emulation of Greenock, seeing he was to take nothing of his thirlage from him; and Craig, speaking of mill-multure, thinks any heritor may build a mill on his own property, though his lands be thirled to another mill, providing he do no wrong thereto, but only take out-landish sucken, and not grind corns that are astricted. But this is a temptation to transgress, and the remedy the other has of pursuing them for abstracted multures, when the transgress is not sufficient. And the decision Skene and Dundas, No 5. p. 5008.; does not come up to this point; for there it was controverted whether Hallyards was thirled or not; and therefore the LORDS would not, *medio tempore*, ordain his mill to be summarily demolished; and therefore the LORDS discharged Carsburn to use either hand-mills or curns in prejudice of Greenock's astriction.

Fol. Dic. v. 1. p. 574. Fountainhall, v. 1. p. 674.

1710. December 19.

The MAGISTRATES of EDINBURGH, and the TACKSMAN of their Mills, *against* JEAN ALEXANDER, Relict of Bailie ADAM CLEGHORN, Brewer in Edinburgh.

IN the action at the instance of the Magistrates of Edinburgh, and the Tacksman of their mills, against Jean Alexander, for abstracted multures of malt, brewed within the liberties of the Town; the pursuers founded upon an ancient charter, granted by King Robert the Bruce to the Town of Edinburgh, bearing, 'Sciatis nos dedisse et ad feudifirmam dimisisse, et hac præsentis carta nostra confirmasse burgensibus burgi nostri de Edinburgh, prædictum burgum nostrum de Edinburgh, una cum Portu de Leith, molendinis et cæteris pertinentiis suis, tenend. et habend. eisdem burgensibus et eorum successoribus de nobis et hæredibus nostris libere, quiete, plenarie et honorifice per omnes rectas metas et divisas suas, cum omnibus commoditatibus, libertatibus et asiamentis quæ ad dictum burgum juste spectare solebant tempore bonæ memoriæ Regis Alexandri, predecessoris nostri ultimo defuncti, reddendo inde nobis et hæredibus nostris annuatim dicti burgenses, et eorum successoribus, 52 mercas Sterling, ad terminos Pentecostes, Sancti Martini in hieme pro equali portione.' Whereby they *contended*, That a right of thirlage was clearly constituted in favour of the Town, confirmed and cleared by subsequent charters from the Sovereign, in the years 1603 and 1636, containing *novodamuses*, mills, and multures, and also by many acts of Town Council, from the year 1655 inclusive, till the year 1660, discharging any indweller within the freedom of the burgh, to pass from the common mills with their malt to grind at any other mill.

No 5.

No 6.

A charter granted to a Royal Burgh, containing this clause, *una cum molendinis et cæteris pertinentiis suis*, was found to constitute a thirlage, and, of consequence, to restrain the brewers from using hand-mills for grinding malt, though the brewers founded on the common presumption of liberty, and on their *reddendo*, which was only watching and warding; but it was found incumbent on the Town to prove possession, for preserving their thirlage from the negative prescription.