

No 67.

The Heritors gave in a bill, representing they had never been in use to pay dry multure for any bear not milled or killed, but sold without the thirle ; and that it had been avowedly and not clandestinely done, (though it was but of late that bear came to be sown on this ground,) and that the pursuer's charter only mentioned *lie* shilling, of which multure was to be taken ; which seemed to import that no more was thirled but only what was grinded. After a great debate amongst the LORDS, they, on the 20th June, appointed a new examination of the defender's witnesses, if ever the bear sold without the thirle used, or was forced to pay multure ; reserving the consideration of the decreets which James Thomson's authors had got against them for bear, how far they would serve for interruptions of this 40 year's immunity. And the LORDS having advised on the 14th June these last depositions of the defender's witnesses, with the answers, interruptions and writs produced by the pursuer, they found, That there being many decreets obtained by the heritors of the mill, against many of the thirle, albeit some particular heritors be not pursued, yet they find the said decreets sufficient to take off the prescription as to the whole thirle, as a *jus individuum* ; and therefore they adhered to their former interlocutor, and ordain the decret to go out ; and find, by the defender's charters, and the pursuer's decret, that even bear, though exported out of the thirle, was liable.

It seemed hard, and very singular, that sentences against one (which is *res inter alios acta*.) should interrupt *quoad alios*, though possession of a part preserves the right *in toto* ; and intimation to one of more debtors interrupts *quoad* all ; and the parallel case was decided somewhat against this in November 1676, Mr George Shiel *contra* his Parishioners, No 61. p. 10761. where one heritor's paying a species of vicarage-teinds did not tie the rest of the parish to that kind.

Fountainhall, v. 1. p. 455. & 506.

No 68.

1727. July 25. MR JOHN M'LEOD *against* HIS VASSALS OF MUIRAVENSIDE.

A SUPERIOR, whose vassals in their charters were thirled to his mill by a thirlage of *omnia grana crescentia*, having insisted in a process of abstracted multures ; the vassals *pleaded* as to their bear, That they had prescribed an immunity from the thirlage, having brought no corns of that kind to the superior's mill, nor paid any sort of duty therefore, for the space of 40 years. It was *answered*, That the astriction being established in the defender's charters, they could perceive no right or immunity contrary to the tenor thereof ; which was sustained. See APPENDIX.

Fol. Dic. v. 2. p. 101.

The Title PRESCRIPTION is continued in Vol. XXVI.