

And in the reasoning, the Court inclined to the construction which our modern authors, Lord Stair and Sir George M'Kenzie, put upon tholling fire and water, viz. kilning and steeping, and that the same was not to be extended to brewing and baking, which was the opinion of Craig and Spottiswood; but had no occasion to give judgment upon the import of such a restriction in general, because in this case *brásium* (malt) was thirled, which having already tholled water in the proper sense when made into malt, cannot otherwise thole water than by brewing.

The thirlage was for that reason found in this case to extend to all malt brewed.

*Kilkerran, No. 8. p. 575.*

No. 83.

1742. July 14.

LAW against BEATSON.

As the words *grana molibilia* are restrictive of *omnia grana*, it is a settled point, that the thirle may export ungrinded what they have of the growth of the lands, more than they have occasion to consume in their families; but whatever thereof they do grind falls under the thirlage.

And accordingly in this case, where, by the bond of thirlage, the lands and whole grindable corns growing thereon were astricted, it was found, that the possessors were bound to grind at the mill all the corns growing on the lands which they should either consume in their families, or grind for sale or other uses.

*Kilkerran, No. 9. p. 575.*

No. 84.

Of all grindable corns.

1743. December 20.

The TOWN of MUSSELBURGH against The MARQUIS of TWEEDALE and Others.

In the declarator of astriction pursued by the Magistrates and Town-Council of Musselburgh, against the heritors and possessors of sundry lands lying within the lordship of Musselburgh, the Lords " Found the lands of Pinkie, belonging to the Marquis of Tweedale, the lands of Newton, belonging to Wauchop of Edmonstone; the lands of Munkton, belonging to Falconar of Munkton, to be astricted to the pursuer's mills; but found, that it did not appear from the constitution of the thirlage, nor from the proof brought upon it, that the same did extend to *omnia grana crescentia*, or to *invecta et illata*; and that the defenders are only astricted for such grain of the growth of the lands as should be necessary for the maintenance of their families, or should be made into meal, flour, or malt, for sale; declaring, that it should not be lawful for the possessors of the said lands to sell their corns, and to buy meal without the thirle for their own consumption; and that in such case they should be liable to pay multure for the meal so bought by them: And also found, that in case the possessors of the said lands should buy corn without the

No. 85.

In a thirlage of grindable corns, in-sucken multure found due for corn brought into the thirle to be made into meal.