

1624. *March 23.* M'KENZIE *against* TOWN of ELGIN.

In an action betwixt M'Kenzie and the Town of Elgin, for payment of thirle multures astricted to the mill of Elgin, conform to an old indenture made betwixt the town of Elgin and the Monks of Pluscardine, wherein the inhabitants of Elgin are expressly bound to grind their corns at that mill, as well growing on their lands, as the corns they should happen to buy from strangers, or others about in the country; the Lords found, that albeit the indenture foresaid astricted the inhabitants to bring their corns to the said mill, tam crescentes, quam pervenientes ad eos sine exemptione quaecunque, yet they were not holden to pay multure, nor to grind any bought corns, growing out-with their own lands, at the mill libelled, except only such corns as should be ground by them, so that they might not ground the same at no other miln, but at the mill libelled, and if they contravened, that they should be holden to pay astricted multures therefore; and that they were not subject to pay multure for any ground corns, such as meal, malt, or other ground corns, which they should happen to buy outwith the lands libelled, and which grew not upon the said lands, the same being ground before they bought the same, and that the astriction struck only *ut supra*, and that corns bought by them within the territory, after the buying thereof, and albeit the same were made in malt, whereby they tholed both fire and water, yet if they were not ground at any other mill, but were sold before they were ground, that the parties should not be subject to pay multure therefor.

Act. *Stuart & Mowat.*

Alt. *Hope & Nicolson.*

Clerk, *Scot.*

Durie, p. 122.

1628. *March 20.* ADAMSON *against* TENANTS of POTHNICK.

Adamson of Braco, infest in the mill of Stralay with the astricted multures, pursues the Tenants of Pothnick for the astricted multures. The Tenants alleged, their master, who was infest in the land occupied by them *cum molendinis*, ought to be summoned; which dilator was found relevant.

Auchinleck MS. p. 128.

1622. *March 22.* ADAMSON *against* HIS TENANTS.

In an action for abstracting of thirle multures, Adamson of Braco against the Tenants of Stralay, the Lords sustained the action for the knaveship, bannock, and lock, as well as for payment of abstracted multures of thq bygone years libelled, albeit the defenders alleged, that they could not be compelled to pay the duties of the knaveship, bannock, and lock, seeing they alleged, that the pursuer was not

No. 15.

Import of the terms "Tam crescentes quam pervenientes ad eos, sine exemptione quaecunque."

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Kniveship, lock, and bannock, may be demanded in an action for abstracted multures.

No. 17. specially infest therein, and these being but duties to be paid for service to be done at the mill, to them who should grind their corns at the same, reason would crave, that they should not pay the duty which is only due for service, where they neither got, nor could get service ; for albeit the pursuer's infestment of thirlage might carry him to the multure of any corns thirled, which should be abstracted, yet the like reason was not for the foresaid duties, which were only payable for service, which service not being done, they alleged these should not be exacted. This was repelled, seeing the pursuer's right was of the thirle multures *cum eorum sequelis usitatis et consuetis* ; and that the pursuer offered to prove, that they were in use to pay these duties before, and seeing he had right to the multures abstracted, he had as good right to those duties used to be paid, seeing he behoved to keep servants at the mill for labouring of the corns when they came there, and these were the fees due to them.—In this process the Lords sustained the summons, bearing, That the defenders abstracted their multures, which were specificè libelled to extend to a special quantity libelled, and found it not necessary that the summons should bear, that the growth of the corns growing upon the ground extended to any particular quantity, and that the summons needed not bear the quantity of the corns which grew yearly, but that it was sufficient, that the summons bear the special quantity of the multures abstracted.

Act. *Mowat & Pitcairn.*

Alt. *Nicolson and Hay.*

Clerk, *Hay.*

Durie, p. 368.

* * * Auchinleck reports this case :

The knaveship and bannock found due to be paid, and may be pursued for *tanquam sequela multura*, where the payment thereof has been usual.

Auchinleck MS. p. 569.

* * * Formerly otherwise decided ; see No. 6. p. 15962.—See No. 384. p. 12512.

1628. June 27.

BLACKBURN *against* ———.

No. 18.

Found that a town's act of thirlage of *invecta et illata*, did not extend to corn only stacked within the town.

William Blackburn and the tenants feuers of Inverkeithing, pursued certain of their inhabitants for abstracting of their multures from their town mill, whereunto the hail burgesses of Inverkeithing were thirled by two acts, excerpt out of their town books, and subscribed by themselves ; which acts bore, That they thirled all the corns brought into the town by them ; and the defenders having taken some acres in labouring from Spencerfield, who astricted them to grind at his own mill all their corns growing upon his own land ; they raised a double pointing against him and the feuers, who pursued them likewise, and for the same multures of the same corns which grew upon Spencerfields lands, by reason the defenders used to bring in these corns, and stack them in their own yards in the town. The Lords