

* * Gosford reports this case :

No. 25.

Captain Guthrie having married the Laird of Mackerston's relict, who was life-rentrix of the mill of Mackerston, they did grant a tack of the mill to Murdoch, for payment of a yearly duty, at two terms in the year, viz. Candlemas and Whitsunday thereafter, the entry of which tack being at Whitsunday 1667, and the Lady surviving Candlemas thereafter, the said Captain did pursue the Miller for a whole year's duty. It was alleged for him and Mackerston, who was heritor, that the pursuer could have no right but to the half-year's duty, seeing the life-renter died before the second term of payment, and so that term did belong to the fiar. It was answered, That as in tacks of lands the legal terms are Whitsunday and Martinmas, and if the life-renter survive Martinmas, the whole year's duty is due to her and her executors, notwithstanding of any conventional terms; so in the tacks of mills, the life-renter's right ought to be regulated according to the legal terms, seeing mill duties are payable for that same year's crop that the vic-tual is ground at the said mill. It was replied, That there was a great disparity betwixt tacks of lands and mills, the benefit whereof is not for any crop of corns, but are *quotidianæ obventiones ob operas & servitia*, and so ought to be regulated according to the terms of the tack; and the entry to mills not being the same as to lands, but sometimes at Whitsunday, and sometimes at Martinmas, they cannot be regulated by the legal terms of land rent.

This was continued to be decided until the 4th December thereafter, as you will there find. See p. 15892.

Gosford MS. p. 191.

1671. July 25. CAPTAIN GUTHRIE *against* The LAIRD of MACKERSTON.

Captain Guthrie having married Dame Margaret Scot, and she dying in possession of the lands of Mannehill, laboured by her husband and her in the month of April, Mackerston, as heritor of the land, craves the rent of the land for that year, in respect the life-renter neither lived till the first legal term, which is Whitsunday, nor till Martinmas. It was answered, that by immemorial custom, life-renters have right to the crop of lands sowed by themselves, whether they attain to the term of Whitsunday or not, neither were they ever found liable for any duty therefor.

Which the Lords sustained.

Stair, v. 1. p. 766.

* * Gosford reports this case :

In the forementioned action, at Captain Guthrie's instance against Mackertson, it being alleged, That he ought to have allowance of a year's duty of a room of the life-rent lands, in respect that the lady, who was wife to the Captain, died in

No. 26.

A life-rentrix found to have right to the crop of lands laboured by her, though she died in April.

No. 26. April 1669, and so could have no right to that year's duty ; it was answered, That she did labour the room with her own plough, and did sow the same before her death, and therefore, by the custom of this country, and several practiques, she had the benefit of the whole corns and increase that year. The Lords did sustain the answer, in respect of the customs and practiques, founded upon that reason, that the liferentrix had been at the whole expense of the labouring and sowing, which yet seems not to be founded in reason, seeing at least they ought to be liable for that same duty a tenant would have paid if he had laboured, who had been at the same charges and expense ; as likewise, because liferenters, by labouring their conjunct fee lands, might transmit to their executors, or husband, a full year's duty, albeit they should die before Whitsunday.

1671. *December 4.*—In this action, Guthrie, as having married the liferentrix, insisted for the whole year's duty of the mill of the barony due for the year 1670. It was alleged for Mackerston, who was heritor, That she dying at Candlemas, should have only right for the half year's duty preceding Martinmas, in respect that the mill was let, and the miller's entry was at Whitsunday, and he was to pay a year's duty at the Whitsunday thereafter, and therefore, she not having survived both the terms, they could not have right but to the half year's duty. It was answered, That notwithstanding of the tack bearing Martinmas and Whitsunday to be the conventional terms, yet it ought to be regulated by the legal term, as the lands of the barony which were thirled to the mill, seeing multures are payable out of the corns and crop growing that preceding summer, and therefore the life-renter surviving Martinmas, had right to the whole year's duty. It was replied, That mills and multures being of a different nature from the crop and corn growing upon the ground, the multures being the salary due to the miller for his pains and expenses, they were of the nature of houses or manufactories, such as soap-works or salt-pans, the life-renters whereof could have no right to the tack-duties but so long as they lived, and not to any terms due after their decease.

The Lords found, That life-renters of mills and duties paid therefor, ought to be regulated according to the legal terms of the lands, so that the life-renter surviving Martinmas, ought to have right to the whole year's duty, and declared that they would make it a practick as to all such cases for the future as to water-mills ; albeit many of the Lords thought, that as to wind-mills or clock-mills, which have no thirlage, and the multures are *quotidiana obventiones*, the case would alter, and ought to be otherwise decided.

Gosford MS. p. 192. & 208.