No. 89.
be an astriction of *invecta et illata*, and that the inhabitants could not erect steel-mills.

tatem villæ et terrarum de Falkirk, cum astrictis multuris totius baroniæ de Callendar, et totius villæ et terrarum de Falkirk; as also on a charter 1606 of the lands and barony of Falkirk, comprehending *terras de Falkirk*, being formerly part of the barony of Abbotskerse then erected into a new barony.

The defenders founded on charters, by the superior to their authors, of certain proportioned parts, in some *terrarum*, and in others *villæ et terrarum de Falkirk*, with astriction of the *grana crescentia* only.

The pursuer contended, That the Town being astricted, this behoved to be understood of the *invecta et illata*; and the clause in the defenders' charter referred only to the lands.

The defenders, That their charters behoved to be the rule, that by them the lands only were astricted, the house being at first intended for the use of the labouring, but, by building other houses for trades-people, the place had grown to its present bulk; and it was an ordinary way of speaking to express villages of farm houses by town and lands, and yet if such were astricted, it would not infer an astriction of *invecta et illata*.

The argument concerning the steel mills proceeded on the supposition of the astriction being only of *grana crescentia*; but this being altered, on consideration of the superior's charter, and the proof, the Lords easily agreed to adhere to that part of the interlocutor.

Cited for the pursuer in this argument, Stair, p. 294. (304.) § "But though," &c. 19th December, 1740, Town of Edinburgh against Mrs. Cleghorn, No. 80. p. 16019.

For the defenders, Craig, L. 2. D. 8. § 8.

Some of the Lords declared they would have been of a different opinion, if the astriction had only been of *grana crescentia*.

The Lords, 9th July, 1744, found the defenders inhabitants of Falkirk thirled and astricted to the mills of the barony, as to the malt only brought in and consumed within the said town; and adhered to the former interlocutor, finding that the defenders their erecting and using steel mills within the town and barony of Falkirk was unwarrantable.

Act. *Graham, sen.* Alt. *Haldane and W. Grant.* Clerk, *Forbes.*

D. Falconer, v. 1. p. 165.

1749. *January* 24.

GRAY and CLARK *against* RAIT and Others.

No. 90.
Thirlage of *invecta et illata*, what it comprehends?

Where there is a thirlage of *invecta et illata*, it will extend to all corns bought by the inhabitants and grinded within the thirle; but, unless there be an established usage to the contrary, it does not comprehend meal or flour imported by the inhabitants grinded before it is bought.

And accordingly in this case it was found, that the baxters of Perth, the inhabitants whereof are thirled to the town's mills for *invecta et illata*, were not liable

to pay dry multure for flour imported from England, but that they were liable for the multure of wheat bought by them and grinded at other mills. *Invecta et illata*, or tholling fire and water, is only understood of steeping and kilning, but not of baking and brewing. No. 90.

Kilkerran, No. 13. *p.* 577.

1749. *February* 22. The BAKERS *against* The MILLERS of PERTH.

No. 91.
In a thirlage of *invecta et illata*, imported flour was found not liable to multure, but that the inhabitants could not buy wheat, and grind it without the thirle.

James Rait, merchant in Dundee, Allan Clark, George Maxton and Laurence Miller, baxters in Perth, imported into that town twenty-seven sacks of flour, which were seized by William Gray and John Clark, in virtue of a tack to them of the Town's mills, giving them power to confiscate any malt or wheat coming into the Town, ground at any other mill; whereupon the importers pursued them in a spuilzie.

The Lord Ordinary, 14th June, 1747, "sustained the defence to assoilzie from penal conclusions; but found the defenders liable to restore the flour, unless they should show by the Town of Perth's charters, that the Town had right to the multure of all ground flour, imported into the Town, and baked for the use of the inhabitants.

The Town have disponed to them, by their most ancient charters, Molendina, terras molendinarias, multuras tam astrictas quam alia servitia, sequelas et alias divorias dictorum molendinorum.

Pleaded for the Town, who appeared to support the millers, That when they got those charters they had no lands; so that it was necessarily a thirlage of *invecta et illata:* That the extent of thirlage was regulated by custom; and there had never been any flour imported into the Town of Perth, till the year 1740, when it was allowed by the Magistrates for easing the scarcity of that season: That in 1743 a quantity was brought in, which was confiscated: That the tacks of the mills were regularly passed in council, and had been of the present tenor these seventy years, as appeared by a tack produced; which ought to be considered as a possession of the thirlage for that time, since no flour had ever been imported.

Pleaded for the pursuers: It is acknowledged the astriction is of *invecta et illata*, but that has been always understood of victual imported unground, which must be ground at the mill of the thirle; and the defenders have no more right to a multure for flour than for oat-meal, which has never been exacted, notwithstanding frequent importations.

The Lords, 24th January, "found that flour imported into the Town of Perth, was not liable in dry multure to the common mills of the said Town."

On bill and answers,

They adhered, in finding that flour imported was not liable in dry multure;