No. 83.

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 astriction in general, because in this case *brasium* (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.

---

1742. *July* 14. LAW *against* BEATSON.

No. 84.
Of all grindable corns.

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.

---

1743. *December* 20.

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

No. 85.
In a thirlage of grindable corns, insucken multure found due for corn brought into the thirle to be made into meal.

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 consumpt; 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.

thirle, to be made into meal or flour for the use of their own families, they should be obliged to grind the same at the pursuer's mills, and to pay insucken multure therefor; and found, that if the defenders sell their own bear, and import grinded malt, they must pay multure for the same; and if they import ungrinded malt, in order to grinding for the use of their families, they must grind the same at the pursuer's mills."

That where the thirle import corn, to be made into meal, &c. for the use of their families, whether any corn of the growth of the lands has been sold or not, they should be obliged to prefer the mill of the dominant tenement, was not controverted; but that they should be liable for insucken multure was said to be a novelty, and so far to introduce a thirlage of *invecta et illata*, though the same interlocutor had declared the thirlage did not extend to *invecta et illata*.

But with this the Lords were not moved; for they considered, that though a thirlage may be disappointed by the servient tenement's being thrown into grass, and that where the thirle provide their families by buying meal, there is no remedy for it; yet if the thirle will buy corn to be grinded for the use of their families, it was just and agreeable to the *bona fides* that ought to be observed between the heritor of the dominant tenement and possessors of the servient, that they should pay the same multure as the corn of the growth of the land would have paid had the land not been thrown into grass.

This, however, is believed to be the first judgment of the kind in favour of the multurer, and took its rise neither from any practice or usage appearing from the proof, nor from any argument from the Bar, but from the Lords' own reasoning among themselves at advising the cause.

*Kilkerran*, No. 10. *p.* 575.

---

1744. *January.* FORBES *against* WALKER.

No. 86.
Knaveship in a thirlage of *omnia grana crescentia.*

Where the thirlage was of *omnia grana crescentia*, knaveship was found due, not only for corns abstracted and carried to other mills, but for all corns falling under the astriction of *omnia grana crescentia*, whether carried to other mills, or sold by the thirle, as having no occasion to grind the same.

*Kilkerran*, No. 11. *p.* 576.

---

1745. *February* 6.
SIR JOHN MAXWELL *against* The UNIVERSITY of GLASGOW.

No. 87.
An heritor paying dry multure to a foreign mill,

Sir John Maxwell of Pollock pursuing a valuation of his teinds, against the University of Glasgow, titular thereof, claimed a deduction of the sum of ———, paid in name of dry multure to the mill of Partick, to which his lands had been