MULTURES, (THIRLAGE.)

No. 1. 1735, Jan. 29. KENNEDY, &c. *against* CAMERON, &c.

THE clause in the malt-tax act 12 *Annæ* was plainly continued in the subsequent acts as appeared by looking at these acts, and so the Lords found; but they also found that that clause 12 *Annæ* does not extend to multures paid at the mill, and were unanimous, but Newhall doubted, if the defenders had been Sir John Arnot's tenants; but the rest seemed to differ from him.

No. 2. 1736, July 27. LOCKHART *against* HIS VASSALS.

THE Lords found that corns which the vassals should happen to grind though not necessary for their own families are thirled to the mill of Carnwath, and liable in the highest multures. The Lords adhered.—10th January 1736.

Some recent charters contained thirlage and the special multures but no mention of services. The Lords found services due by the nature of the thirlage; the words are, that the astriction *comprehends* services when there is no immunity by prescription.—16th January 1736.

Upon a clause "all grindable corns growing upon the lands," the Lords found that clause tantamount as the clause, "all grindable corns that they shall happen to grind," and pronounced the same interlocutor as they did on the 10th instant, *quod vide.* The clause was expressed in the Latin charters *grana molibilia,* in the dispositions, grindable corns; and the charters being recent, they did not regard a proof that the tenants paid multures for what they sold;—and they judged the same way some time ago in another process betwixt this same Mr Lockhart and another vassal.—17th January 1736.

Upon a question, Whether a mill is not sufficient for the sucken, having only a gathered dam, whether the sucken may go elsewhere, how much they may carry elsewhere, and what they should pay? the Lords found they may carry what is necessary for their families after waiting 48 hours and are to pay no multures for it.—21st January 1736.

The Lords adhered to the former interlocutor of 21st January last with this addition, "and the mill not capable to serve them through want of water or other defect in the mill."

The Lords adhered to their former interlocutor finding that the clause of thirlage to pay a peck of multure for five firlots, was the same with the clause, out of five firlots.—18th February 1736.

The Lords found that immunities from mill services could not be prescribed where the vassals were by their charters expressly tied to services, and some were of opinion that immunity could not be prescribed where the astriction was by the charters though without mention of services, but this not determined; because they found it proven that services were paid to Cleugh mill; and though there was no proof of services paid to other mills,

yet there was no proof of immunity for 40 years; and therefore they adhered to their interlocutor of 16th January last. They thought also that payment to any within the thirl, though as a gratuity, interrupted the prescription of immunity as to all within the thirl, like payment of annualrent out of one tenement where the annualrent is constituted upon more tenements.—25th June 1736.

The Lords adhered, with the addition, that in case of want of service in the terms of the former interlocutor they may carry the whole corns to another mill, and found no more due to the miller than the multure in the former interlocutor.—1st July 1736.

No. 3. 1736, June 19, Dec. 15. EARL OF WIGTON *against* THE TOWN OF KIRKINTILLOCH.

WE seemed to agree that there was here no prescription to astrict the *invecta et illata*, either in general, or such as are consumed in the barony; and we thought that it resolved in a question in law, Whether a general astriction imports an astriction even of *invecta et illata*, at least in so far as is necessary for the families or consumers, especially where there is a burgh of barony in the thirl. And we found that the *grana crescentia* necessary for the use of the families are astricted. 2dly, That they cannot sell these and buy others in their place, otherwise those imported are astricted. 3dly, That ground-meal or malt bought and imported, and consumed by the inhabitants, is not thirled. 4thly, That grain imported, and afterwards ground and consumed, is thirled. 15th December, The Lords Adhered. (See Note of No. 2.)

No. 4. 1740, Jan 22. LORD MAXWELL *against* PORTIONERS OF HOLYWOOD.

THE Lords, on consideration of the rights, that it appeared that the mill belonging to the charger, as well as lands of the suspenders, were part of the ancient Barony of Holywood, belonging to the Abbacy of Holywood, and having also considered the proof, found the defenders astricted, and remitted to the Ordinary to proceed accordingly. But they would not determine upon the footing of the Ordinary's interlocutor, that it was the mill of a barony;—which many of us thought not sufficient; but that it was a mill belonging to Churchmen. This indeed is against the decision 17th July 1677, Ross against M'Kenzie, which I shewed them, and was read. (DICT. No. 125. p. 10,866.) But we thought it not law.

No. 5. 1740, Dec. 16. LOW of Brackley *against* BEATSON of Mawhill.

IN a question of bygone abstractions, the Lords had such a regard to the constant possession, that in the process they found the defender liable for bygone abstractions from the time he discontinued going to the mill in 1730 to the commencement of the process in 1735 and thereafter;—notwithstanding it was as easy a multure as that the defender paid at other mills, or as he could have got his corns ground for, so that it was really no more than the *merces operarum*,—and 2dly, that the defender had reason to believe he was not thirled, there being no such servitude in his charters, or any other writing known to him,—3dly, that he and his predecessors had been in use to take their tenants bound