

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 multurur, 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