

- No. 2. Melrose, with milns and multures in the ——— clause of the charter, for the payment of certain sums of money allenarlie for all other things that might be asked or craved, no mention nor restriction being made in the said charter of the said thirle multures set long before the feu or instrument made to the pursuer of the foresaid miln and multure ; whilk allegiance of the defender the Lords admitted in respect of the said instrument being as said is.

Colvil MS. p. 252.

1588. *March.* RICHARDSON against FEUERS of MUSSELBURGH.

No. 3.

A Baron being infest *sum astrictis multuris totius baroniae*, the thirle was so far understood to comprehend *invecta et illata*, that use and custom was admitted to probation.

James Richardson of Smeaton pursued the tenants of Musselburgh for the abstracting of their multures fra his milns of Musselburgh, into the whilk he was heritably infest and qualified. His summons is not only of the multures of the corns that grow within the lordship of Musselburgh, but also of all other corns that was brought in *aliunde*, and thollid fire and water within the said lordship and town of Musselburgh. It was alleged, *first*, that he instructed not his summons, for his infestment bore but *cum astrictis multuris totius Domini*; the which could never bring him to have any right to take multures or thirle of such corns that was brought and grew not within the lordship and territory, because the thirlage that was sought was not the thirlage of the ground, or *servitus realis*, but was ane personal prestation, *ex industria hominis*. Et non sunt facile admittenda jura ea quæ gentium libertati et juri scripto effectum esse repugnant ; so that in no manner of sort it could be holden lawful to take the multures of men's handy-work, labour, and industry, considering the defenders are for the most part indwellers within the town of Musselburgh, and depending upon their industry and handy-work of making malt, that was *aliunde* brought into them, and grew not upon the ground of the territory, and not subject to paying duties, but their burgh miller, because they were a free burgh. It was replied, That there were sundry decreets obtained against them, by them that were before proprietors of the said mills. The Lords admitted the libel and reply to probation, and found for the most part that the exceptions and defences that were proponed would come more properly against the probation, *licet nonnulli in contraria fuerunt opinione*.

Colvil MS. p. 440.

1589. *December.*—Into the action and cause pursued, James Richardson of Smeaton against the inhabitants of the burgh of Musselburgh, for the abstracting of their bought and inbrought corns to pay multure at his mills of Musselburgh, the libel and reply being admitted to probation, and for proving thereof, there were produced sundry witnesses, and very famous, that deponed that the inhabitants of Musselburgh were ever accustomed to bring the corn that was bought by them to be ground at the said milns, and paid conform to the libel ane peck for two bolls malt, and a peck for six firlots of wheat, et sic probatio quod aliunde invecta et illata

was in use to be thirled, and that tholled water and fire; and also there was ane decreet produced for proving of the reply obtained at the instance of the Lady ———, sometime occupier of the said mills. It was alleged that the libel was not sufficiently proved, for without ane express writ, evident or constitution, there could be no such thirlage proved; and as to that that the witness had proved, that the inhabitants of Musselburgh had been in use in all times by-gone, to bring their corns that was bought and inbrought to the milns of Musselburgh, and to pay multure therefor conform to the libel, it was answered, that it was but actus mere voluntarius et hoc jus alteri non acquiritur; and that men's industry in buying or selling could not be unto them as a servitude, more nor the person's self; and as to the decreet, it was not given against feuers as were the defenders. It was answered, that the long use and consuetude in milns ought ay to be observed *et antiquitati standum est*; and the said use of corns that were bought and inbrought, was conform to ane law and act made, King William, Chap. 9.; and so the meaning of the law, by the express words of the text, is, That the corns that were bought and inbrought should pay multure. The Lords, after long reasoning at the Bar, pronounced *definitive* for the most part, That the libel and reply were sufficiently proved.

No. 3.

Colvil MS. p. 446.

1605. July 10.

A. against B.

He that is infest in thirle multures will get that party ordained to pay thirle for his bear, whose infestment binds him to pay thirle to the said miln for all his corns grindable, since bear is as well grindable both as bear and malt as any other corns are.

No. 4.

Haddington MS. No. 903.

1610. Jannary 17.

NEILSON against TENANTS.

The 13th part sustained as the quantity of multures, in respect of the custom of the rest of the barony; albeit the defender offered to prove, that the possessors of his room had been in use, many years, to get the corns grinded at the said miln for a less duty, which was only found relevant for by-gones, but not in time coming.

No. 5.

Fol. Dic. v. 2. p. 468.

* * Lord Kames gives this case as from Haddington. The Editor has not found it. There may be an error of the date.—See APPENDIX.