

only for all their grindable corns growing within the thirle, but for all other corns which they should bring into the thirle to be consumed there, and for all malt, whether grinded or not, brought in and brewed within the thirle; but found, That such corns and malt imported only in the way of trade for exportation or sale, and not grinded or consumed within the thirle, are not subject to the payment of multures.—See APPENDIX.

No. 67.

Fol. Dic. v. 2. p. 466.

1722. January 17.

STEEDMAN, Feuer of the Mill of Kinross, *against* HORN and YOUNG.

The lands of Kinross were feued out by the proprietor to the country-people, for a small silver-rent, with a dry multure of *omnia grana crescentia*, to his mill of Kinross. Afterwards, a burgh of barony and regality was erected, and then the proprietor thirled the inhabitants, who are likewise feuers within that burgh, for so much of their corns that should be imported as tholled fire and water within the burgh; and both these thirlages of *omnia grana crescentia*, *et invecta et illata*, were established by the vassals' charters. In the prosecution of these several thirlages, a question arose, "Whether the corns of the barony, after having paid a dry multure of *omnia grana crescentia*, being carried afterwards into the burgh, were liable again for the other duty of *invecta et illata*."

It was urged for Steedman, feuier of the mill: That in constituting these two distinct servitudes, the proprietor proposed to himself a distinct duty and rent out of each. He considered what quantity of grain might grow in the barony, and what might be consumed in the town; and he laid a tax upon each of them separately, without relation to the other; and this is most of what he draws instead of rent: Why then should not the same grain be liable to both these duties, if it is a true proposition, that it grew within the one feu, and tholled fire and water within the other? It can make no difference, that the same over-lord is superior of the barony and of the town; and that it savours of a hardship, that he should exact two several multures for the same grain, since such is the express constitution of these different thirls. Put the case, the Baron of Kinross were possessed of another barony in the neighbourhood, thirled to its own mill, it cannot be controverted but that the grains of this other barony, which had paid multure at its proper mill, would be liable to the duty of *invecta et illata*, upon being imported into the town of Kinross, and yet the same imaginary inconveniency or impropriety should occur in that case as in this, that the same grain had paid a double duty. And thus it was determined in the noted case, Ramsay *contra* Town of Kirkcaldy, 11th December, 1678, No. 39. p. 15981.

On the other side it was urged: That the rational interpretation of these servitudes, in consistence with one another, and with cool sense, can be nothing but this:—The proprietor designed not only the corns growing within his barony, but

No. 68.

A proprietor having established a thirlage of *omnia grana crescentia* in his barony, and of *invecta et illata* in his burgh of barony, it was found, that the same corns, though growing in the barony, and brought into the burgh, could not be subject to both duties.

The contrary, Ramsay *against* Town of Kirkcaldy, No. 39. p. 15981.

No. 68. all beside brought into his town for the use of the inhabitants, should be manufactured at his mill; or, which to him was the same, that they should pay a certain duty, with liberty of being manufactured there, or any where else. Even from this general view it will be evident, that the same corns can never be subject to both thirle-duties; for the duty being the price of the manufacture, since the same corns cannot be twice manufactured at a mill, they cannot be liable to two thirle-duties; for this were to pay the price twice for the same purchase. These, then, *invecta et illata*, and *omnia grana crescentia*, are not two distinct servitudes, as the pursuer erroneously conceives them, but the same, extending indeed over different subjects, *sciz.* not only the corns growing in the barony, but any other corns brought into the burgh; and so the *grana crescentia*, whenever that servitude is satisfied, by paying a double multure, they have thereby, as it were, purchased their freedom, and cannot be subject to the same servitude over again. The impropriety, therefore, of the pursuer's claim, does not lie simply in demanding double duty for the same grain, but in demanding twice the same duty, upon the same *medium*, both of them upon the precise same *cause* and *account*, which is not only improper, but truly inconsistent.

“ The Lords found the grain growing within the barony of Kinross cannot be liable for thirle to the mill of the barony, both as *grana crescentia*, and *invecta et illata*.”

Rem. Dec. v. 1. No. 29. p. 62.

1723. *December.*

The HEIRS of RUSSEL of Gartness, and MORE, their Assignee, *against* WADDEL of Easter Moffat.

No. 69.
Implied discharge of a thirlage.

The pursuers insist in a process of abstraction against the said Waddel of Easter Moffat, and as their title produce a disposition from Anna Duchess of Hamilton, in October, 1657, not only of the mill of Gartness, with the multures and sequels, but *per expressum* disposing the multures and sequels of several tenements of lands, as thirled and astricted to the mill of Gartness, and, amongst others, the multures and sequels of the lands of Easter Moffat. It was pleaded for the defender, That he derived right by progress from Cunningham of Gilbertfield, who, as appears by the transumpt of a charter from the family of Hamilton, in the year 1611, had the right of the lands of Gilbertfield, whereof Easter Moffat was a part, “ Tenendas per omnes rectas metas prout jacen. in longitudine et latitudine, in omnibus ædificiis, molendinis, multuris et eorum sequelis, &c. reddendo denarium nomine albæ firmæ, si petatur tantum, pro omni alio onere.” And they contended, That their authors having a charter *cum molendinis et multuris* in the *tenendas*, and likewise bearing in the *reddendo* a blench-duty *pro omni alio onere*, long before the disposition of the lands of Gartness and mill, this imported