to pay dry multure for flour imported from England, but that they were liable for the multure of wheat bought by them and grinded at other mills. *Invecta et illata*, or tholling fire and water, is only understood of steeping and kilning, but not of baking and brewing. No. 90.

Kilkerran, No. 13. *p.* 577.

1749. *February* 22. The BAKERS *against* The MILLERS of PERTH.

No. 91.
In a thirlage of *invecta et illata*, imported flour was found not liable to multure, but that the inhabitants could not buy wheat, and grind it without the thirle.

James Rait, merchant in Dundee, Allan Clark, George Maxton and Laurence Miller, baxters in Perth, imported into that town twenty-seven sacks of flour, which were seized by William Gray and John Clark, in virtue of a tack to them of the Town's mills, giving them power to confiscate any malt or wheat coming into the Town, ground at any other mill; whereupon the importers pursued them in a spuilzie.

The Lord Ordinary, 14th June, 1747, "sustained the defence to assoilzie from penal conclusions; but found the defenders liable to restore the flour, unless they should show by the Town of Perth's charters, that the Town had right to the multure of all ground flour, imported into the Town, and baked for the use of the inhabitants.

The Town have disponed to them, by their most ancient charters, Molendina, terras molendinarias, multuras tam astrictas quam alia servitia, sequelas et alias divorias dictorum molendinorum.

Pleaded for the Town, who appeared to support the millers, That when they got those charters they had no lands; so that it was necessarily a thirlage of *invecta et illata:* That the extent of thirlage was regulated by custom; and there had never been any flour imported into the Town of Perth, till the year 1740, when it was allowed by the Magistrates for easing the scarcity of that season: That in 1743 a quantity was brought in, which was confiscated: That the tacks of the mills were regularly passed in council, and had been of the present tenor these seventy years, as appeared by a tack produced; which ought to be considered as a possession of the thirlage for that time, since no flour had ever been imported.

Pleaded for the pursuers: It is acknowledged the astriction is of *invecta et illata*, but that has been always understood of victual imported unground, which must be ground at the mill of the thirle; and the defenders have no more right to a multure for flour than for oat-meal, which has never been exacted, notwithstanding frequent importations.

The Lords, 24th January, "found that flour imported into the Town of Perth, was not liable in dry multure to the common mills of the said Town."

On bill and answers,

They adhered, in finding that flour imported was not liable in dry multure;

No. 91. but found that the inhabitants of Perth could not buy wheat, and grind it at any other than the Town's mills, and afterwards import it.

Reported by the President, who had been Ordinary.

Act. *Lockhart.* Alt. *R. Craigie.* Clerk, *Justice.*

D. Falconer, v. 2. p. 64.

1749. *June* 14. ELPHINSTON *against* LEITH.

No. 92. Though dry multure is paid for bear, it will also pay multure at grinding.

It often happens that a dry multure is paid for bear; but notwithstanding thereof, if the bear be brought to the mill, it will pay the ordinary multure paid of the oats.

Kilkerran, No. 14. *p.* 577.

1750. *January* 4.

HARROWERS of Milnathort *against* HORN of Shanwell.

No. 93. A charter from a subject *cum molendinis* in the *tenendas* liberates from astriction.

William and Andrew Harrowers, joint proprietors of the mill of Milnathort, pursued Andrew Horn of Shanwell in a declarator of astriction of his said lands to the said mill; and founded on a charter 1697, from the Lord Burleigh, of the mill, with the multures, &c. of the barony of Burleigh and Shanwell; and the defender insisted on a charter 1540, granting his lands *tenendas cum molendinis, multuris, &c. reddendo* a feu-duty, *pro omni alio onere.*

By the proof it appeared the defender had come to the mill, and paid a less duty than the sucken; and had assisted in repairing the dam and mill-house, part of which was allotted to him; and also that he had gone to other mills.

Pleaded for the pursuers: This is no mill of a barony, which presumes astriction; and the grant, *cum molendinis* in the *tenendas*, has not the effect to liberate the defender's lands, who has come to the mill and paid services; and the abstractions have not been such as to acquire a liberation.

Pleaded for the defender: A grant *cum molendinis*, in a subject's charter, is an effectual liberation; the reason why it is not so in the King's being that the signature goes no further than the word *tenendas*; and the rest is filled up in the charter by the writer: The defender has come to the mill, but has not paid intown multure; and he has gone to other mills; and the assisting to repair the mill and dams, has been done out of good will, or for some favour granted by the miller.

The Lords found the defender's lands not astricted.

See 28th June, 1751, Russel against Harrowers, *voce* WARRANDICE.

Act. *Boswell & Bruce.* Alt. *Lockhart and A. Pringle.*

D. Falconer, v. 2. p. 132.