

1666. *June.* PATOUN and MERCER *against* PATOUN.

No. 33.

John Patoun, as heritor of the mill of Mukart, pursued for the abstracted multures, and alleged, That the mill is the mill of the barony, and the lands a part of the barony, and that they being in immemorial possession of in-town multures, of one peck of the boll, and that, above thirty years ago, there was a decree-arbitral, by the Marquis of Argyle, decerning these multures. The defenders alleged, Absolvitor, because they were infest before the pursuer's right produced *cum molendinis*; and as to the act of Court, the whole tenants were not present; and the decree-arbitral, it is under reduction.

The Lords sustained the pursuer's condescence, reserving the reduction as accords.

*Stair, v. 1. p. 381.*

1667. *December 10.*

EARL of CASSILIS *against* SHERIFF of GALLOWAY.

The Earl of Cassilis pursues the Sheriff of Galloway, and the tenants of Achnotoroch, for abstracted multures, and insists on this ground against the Sheriff, that he being heritor of the lands, and vassal to the pursuer, did command them to leave the pursuer's mill, and to come to his own mill, and so was liable. The defender alleged, That this member of the summons is not relevant, because any man may desire any person he pleases to come to his mill, and there was never a pursuit sustained against any others than the abstracters, and not against those to whose mill they came; *2dly*, It is not libelled that the defender got a greater duty upon the tenants coming to his mill; and although he had, it were not relevant; *3dly*, By the defender's right, he is liberated of all multures, except knaveship and bannock, which is only the hire due to the millers for their service, and there is no obligation upon him to cause his tenants come to the mill. It was answered, The pursuer offered to prove the defender had gotten a greater duty upon the tenants coming to his mill; and albeit the astringtion be only of knaveship and bannock, that is not alone due for the millers' service, but there is a profit thence arising to the master; that the Sheriff, being heritor and vassal, albeit he be not personally obliged to cause the tenants come to his mill, yet the lands being astringted by his infestment, it was his fault to remove them.

The Lords assoilzied from that member of the libel, and found it not relevant against the heritor, but only against the tenants.

*Stair, v. 1. p. 491.*

No. 34.

Thirlage in a vassal's charter to a superior's mill found not to infer multures upon the vassal, although he influenced his tenants to come to his own mill. The tenants only were liable personally for abstracting.