

No 66.

1685. *March 4.* TARSAPPIE *against* PITTENDRIECH.

IN an action for abstracted multure, founded on a thirlage, constituted by the pursuer's charter, the defender having *alleged* prescription of freedom from the mill, and the pursuer *replied* no interruption; it appeared by probation led, that the defender; for the space of 40 years and upwards, had gone very frequently, without being quarrelled by the pursuer, to any other mill he pleased; and sometimes, but seldom, to that to which he was thirled.

Alleged for the pursuer, That the depositions did not prove 40 years continued and uninterrupted freedom, since they avouch, that the defender came sometimes to the pursuer's mill; and as such a probation would not infer prescription of the thirlage, if interrupted but by one single act of going to another mill, no more can it make a prescription of immunity from an astriction constituted by writ.

THE LORDS found prescription of freedom proved for the defender.—This appears to be a very irregular decision.

Fol. Dic. v. 2. p. 101. Harcarse, (MULTURES.) No 726. p. 205.

1688. *June 13.* FEUARS OF GAITMILK MILL *against* FEUARS OF DUNFERMLINE.
Or, THOMSON of Mildeans *against* HERITORS OF KINGLASSIE.

No 67.

In a declarator of immunity from thirlage of *grana crescentia omnium terrarum*, the Lords assolizied because the proof as to immunity was only *negative*.

IN a declarator of the immunity of beer, sold, and not ground, from a thirlage of *grana crescentia omnium terrarum*;

Alleged for the defender, That the pursuer must prove *positive*, that for the space of 40 years, &c. regularly and openly the bear was sold without any multure exacted, and not barely *negative*, that the multure of any bear sold was not exacted, seeing the thirlage was constituted *scripto*; although such a negative probation were sufficient to hinder or take off a constitution of thirlage by prescription; *2do*, The possession of any species of grain constituted *scripto* ought to preserve and interrupt.

THE LORDS sustained the first allegiance for the defender, and probation as to the immunity being only negative, they assolizied from the declarator, and found that the immunity was not proved; and so the second point was not considered. *Item*, THE LORDS found, That the master's rents, viz. the Abbot's feuduties, in victual and horse-corn paid to the Abbot (not being converted) were free of multure. Though it was controverted by severals, and not determined, if horse-corns, spent upon labouring horses, should be free.

Thereafter, upon the 14th July 1688, the LORDS found, That the ancient barony being now divided into many hands, the decreets of abstraction for both, (in respect of the constitution by writ) against several of the heritors for diverse years, did interrupt even against the other heritors not contained in the