No. 85.

thirle, to be made into meal or flour for the use of their own families, they should be obliged to grind the same at the pursuer's mills, and to pay insucken multure therefor; and found, that if the defenders sell their own bear, and import grinded malt, they must pay multure for the same; and if they import ungrinded malt, in order to grinding for the use of their families, they must grind the same at the pursuer's mills."

That where the thirle import corn, to be made into meal, &c. for the use of their families, whether any corn of the growth of the lands has been sold or not, they should be obliged to prefer the mill of the dominant tenement, was not controverted; but that they should be liable for insucken multure was said to be a novelty, and so far to introduce a thirlage of *invecta et illata*, though the same interlocutor had declared the thirlage did not extend to *invecta et illata*.

But with this the Lords were not moved; for they considered, that though a thirlage may be disappointed by the servient tenement's being thrown into grass, and that where the thirle provide their families by buying meal, there is no remedy for it; yet if the thirle will buy corn to be grinded for the use of their families, it was just and agreeable to the *bona fides* that ought to be observed between the heritor of the dominant tenement and possessors of the servient, that they should pay the same multure as the corn of the growth of the land would have paid had the land not been thrown into grass.

This, however, is believed to be the first judgment of the kind in favour of the multurer, and took its rise neither from any practice or usage appearing from the proof, nor from any argument from the Bar, but from the Lords' own reasoning among themselves at advising the cause.

*Kilkerran*, No. 10. *p.* 575.

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1744. *January.* FORBES *against* WALKER.

No. 86.
Knaveship in a thirlage of *omnia grana crescentia.*

Where the thirlage was of *omnia grana crescentia*, knaveship was found due, not only for corns abstracted and carried to other mills, but for all corns falling under the astriction of *omnia grana crescentia*, whether carried to other mills, or sold by the thirle, as having no occasion to grind the same.

*Kilkerran*, No. 11. *p.* 576.

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1745. *February* 6.
SIR JOHN MAXWELL *against* The UNIVERSITY of GLASGOW.

No. 87.
An heritor paying dry multure to a foreign mill,

Sir John Maxwell of Pollock pursuing a valuation of his teinds, against the University of Glasgow, titular thereof, claimed a deduction of the sum of ———, paid in name of dry multure to the mill of Partick, to which his lands had been

astricted, for which sum he had purchased an immunity from the astriction, so that the payment was a real diminution of his rent.

No. 87. and craving deduction thereof from his rent, was found entitled thereto if he had not thirled his lands to his own mill—otherwise if he had.

Answered: The heritor has thirled his tenants to his own mill, for which he receives so much more rent as makes up the payment of the dry multure.

Replied: If the tenants paid the dry multure themselves, they would pay so much less rent, and notwithstanding behoved to go somewhere to grind, and probably to their master's mill, and what he got for grinding would not be a teindable subject; therefore he taking up in the rent what he pays for the multure, is only to be considered as collecting from the tenants for the multurer, and ought to have deduction thereof.

The estate being in different circumstances, part astricted, and part not, the Lords Commissioners found, That the dry multure payable by the pursuer to the College for the lands which were astricted to his mill, ought not to be deducted from the rental; but found that the dry multure payable for the pursuer's lands, which were not astricted to any mill, ought to be deducted from the rental of these lands.

Act. *W. Grant and G. Sinclair.* Alt. *Millar.*

*D. Falconer, p.* 66.

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1745. *February* 22. LANDAL *against* MELDRUM.

No. 88. Mill unable to serve the thirle. May grain be sold?

Where the astriction was of *omnia grana crescentia*, it was found, that if, after 48 hours, there be not water to serve the mill, the thirle may go where they will, with as much as is necessary for the use of their families.

It was also found, that the thirle had no right to sell corns, not grinded, for payment of rent or servants fees.

*Kilkerran, No.* 12. *p.* 577.

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1746. *July* 18. WILLIAM MACKIE *against* The MALTSTERS of FALKIRK.

No. 89. The superior of Falkirk having his charters *cum astrictis multuris ville*, and having granted charters to the feuers with astriction of the *grana crescentia*, it was found on proof to

William Mackie, tacksman of the mills of Falkirk, pursued some of the distillers and maltsters there in a declarator of astriction, and for abstracted multures, in which the Lords, 21st July, 1744, "Having considered the testimonies of witnesses and writs produced, found that the defenders were only astricted to the pursuer's mill as to their *grana crescentia;* and found that the defenders their erecting and using steel mills within the town and barony of Falkirk was unwarrantable."

Each of the parties reclaimed against that part of the interlocutor whereby they thought themselves aggrieved.

The tacksman founded on a charter, 21st September, 1643, in favours of the Earl of Callendar, of the lands and barony of Callendar, comprehending dimidie-