

## THIRLAGE.

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1565. July 12. LAIRD OF FORDEL *against* TENANTS OF FRENCHY.

ALBEIT ane be astrictit to pay thirle multuris, and to grind the cornis growand upon his ground at an ather man's miln, zet he nevertheless is not bund nor oblist to bring to his miln that part of his cornis, quhilk payis his zeirlie fermes, his teindis, the toill of the threshing of his cornis, his pence maill, or cornis for sawing of the ground, the sustentatioun of his bestial, or for uphalding of his pleuch or pleuch graith.

*Balfour, (MILNS) p. 495.*

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1566. April 4. HOPPRINGLE *against* CAIRNCROSS.

Anent the action pursued be ——— Hoppringle and Ker his mother against Robert Cairncross of Colmestre, for payment of the thirle multures of the land of C. to the pursuer's miln of ———, as it was thirled thereto, alleging that the Abbot of Melrose and Convent thereof had made acts in their Convents, that the tenants of C. should come as said is with their corns to the said pursuer's miln, and pay their multure thereto, and so had thirled themselves thereto as said is; and to that effect had set the said miln to the pursuer's predecessors and himself for long tacks with the thirle multure thereof; and before that the tacks were run furth, the pursuer got the said miln and thirle multure thereof in feu and heritage: Be the whilk tacks and feu, the pursuer and his predecessors had been in possession of the miln and multures, and specially of the lands of C. The defender alleged he should be assoilzied from the petition, because that his predecessors obtained the lands of C. in feu and heritage of the Abb. and Convent of

No. 1.

No. 2.

Where a superior by an act of his own court, thirled all the barony, it was found that such feuers as were in-  
*feft cum molendinis, &c.*  
prior to the said act, were not thereby bound.

- No. 2. Melrose, with milns and multures in the ——— clause of the charter, for the payment of certain sums of money allenarlie for all other things that might be asked or craved, no mention nor restriction being made in the said charter of the said thirle multures set long before the feu or instrument made to the pursuer of the foresaid miln and multure ; whilk allegiance of the defender the Lords admitted in respect of the said instrument being as said is.

Colvil MS. p. 252.

1588. *March.* RICHARDSON *against* FEUERS of MUSSELBURGH.

No. 3.

A Baron being infest *sum astrictis multuris totius baroniae*, the thirle was so far understood to comprehend *invecta et illata*, that use and custom was admitted to probation.

James Richardson of Smeaton pursued the tenants of Musselburgh for the abstracting of their multures fra his milns of Musselburgh, into the whilk he was heritably infest and qualified. His summons is not only of the multures of the corns that grow within the lordship of Musselburgh, but also of all other corns that was brought in *aliunde*, and thollid fire and water within the said lordship and town of Musselburgh. It was alleged, *first*, that he instructed not his summons, for his infestment bore but *cum astrictis multuris totius Domini*; the which could never bring him to have any right to take multures or thirle of such corns that was brought and grew not within the lordship and territory, because the thirlage that was sought was not the thirlage of the ground, or *servitus realis*, but was ane personal prestation, *ex industria hominis*. Et non sunt facile admittenda jura ea quæ gentium libertati et juri scripto effectum esse repugnant ; so that in no manner of sort it could be holden lawful to take the multures of men's handy-work, labour, and industry, considering the defenders are for the most part indwellers within the town of Musselburgh, and depending upon their industry and handy-work of making malt, that was *aliunde* brought into them, and grew not upon the ground of the territory, and not subject to paying duties, but their burgh miller, because they were a free burgh. It was replied, That there were sundry decreets obtained against them, by them that were before proprietors of the said mills. The Lords admitted the libel and reply to probation, and found for the most part that the exceptions and defences that were proponed would come more properly against the probation, *licet nonnulli in contraria fuerunt opinione*.

Colvil MS. p. 440.

1589. *December.*—Into the action and cause pursued, James Richardson of Smeaton against the inhabitants of the burgh of Musselburgh, for the abstracting of their bought and inbrought corns to pay multure at his mills of Musselburgh, the libel and reply being admitted to probation, and for proving thereof, there were produced sundry witnesses, and very famous, that deponed that the inhabitants of Musselburgh were ever accustomed to bring the corn that was bought by them to be ground at the said milns, and paid conform to the libel ane peck for two bolls malt, and a peck for six firlots of wheat, et sic probatio quod aliunde invecta et illata