

good defence for tenants, that their master is not called; but in the possessory actions for mails and duties, they did not see the necessity, seeing the master may compear and defend. Some of the Lords were for allowing her to cite Weem *incidenter* in this process; but the plurality repelled the tenant's objection, and decerned in the relict's action; yet superseded extract for a time, that Weem's tutors (he being minor) may search for his papers, and on production debate for his interest, which would be shorter than for the tenants to suspend again upon double poinding and distress.

No 104.

*Fountainball, v. 2. p. 141.*

See REMOVING.

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S E C T. XXII.

Citation in Processes of Abstracted Multures.

1610. December 1. FENTON *against* The TENANTS of MATHERTIE.

HE who is denuded of his heritable right, by resignation thereof made in favour of him who is infest, holden of the King, cannot use that infestment as a title of his pursuit; neither can the concurrence of him who is infest sustain the pursuit; because they are not compatible, and the exception is merely *exclusivum juris agentis*.

No 105.

A man may pursue the possessor of lands for abstracting of his corns from the pursuer's mill, albeit he call not the heritor, because the tenant is called *super facto proprio*; but that decret given against the tenant, will not prejudice the master of his defence or right.

*Fol. Dic. v. 1. p. 140. Haddington, MS. No 2029. & No 2030.*

1628. March 19. ADAMSON *against* TENANTS of Strathlaw.

AN instrument of sasine, being only the assertion of a notar, is not sufficient to verify a thirlage; nor will it furnish a man interest to pursue for abstracted multures, except the charter containing thirlage be produced, which will be sustained to be proven in process.

No 106.

No process was found against any tenants for abstracted multures, where their master the heritor was not summoned; although it was alleged that they were in continual use of bringing their corns to the pursuer's mill, as thirled thereto,

March 20.—No process against the tenant for abstracting the multures, if the master, who is heritor, be not summoned; albeit it be *alleged*, that they were in continual use of bringing their corns to the pursuer's mill, as thirled thereto, and of paying the accustomed dues of thirlage past the memory of man.

No 106.  
and paying  
the accus-  
tom-  
ed dues of  
thirlage, past  
memory of  
man.

*March 22.*—In the same action, *alleged* by the defender for the knaveship, &c. because these particulars are only due to the miller and servants for attendance, and not to the master, and therefore could not be craved unless their corns had been ground. *Replied*, That ought to be repelled, in respect of the infetment bearing him to be infet in the multures, with the sequels; in fortification whereof he offers to prove continual possession of the same. The allegiance was repelled in respect of the reply.

*Fol. Dic. v. 1. p. 141. Kerse, MS. fol. 95.*

\* \* \* Spottiswood has copied the above almost *verbatim*, thus :

AN infetment of sasine (being only the assertion of a notar,) is not sufficient to verify a thirlage; nor will it furnish a man interest to pursue for abstracted multures, unless the charter containing the thirlage be produced, which will be sustained to be proven *cum processu*.

No process against any tenants for abstracted multures, if their master who is heritor, be not summoned; though it be alleged that they were in continual use of bringing their corns to the pursuer's mill, as thirled thereto, and of paying the accustomed dues in thirlage past memory of man.

In the same action, *alleged* by the defenders, that the summons was not relevant for the knaveship, bannock, gowpen, &c. because these particulars are only due to the miller and his servants for their attendances, and not to the master, and therefore could not be craved, unless their corns had been grinded there. *Replied*, That ought to be repelled, in respect of his infetment bearing him to be infet in the multures with the sequels, in fortification whereof he offers to prove continual possession of the same. The allegiance was repelled in respect of the reply.

*Spottiswood, p. 206.*

*See MILL.*

### SECT. XXIII.

Citation in Process of Forthcoming.—In Adjudication.—In Reduction *ex capite inhibitionis*.

No 107. 1617. July 10.

BROWN *against* WRIGHT.

IN an action betwixt Brown and Wright, the LORDS found no process in a reduction *ex capite inhibitionis*, because the heir of the party inhibited was not summoned. *See* No 110.

*Fol. Dic. v. 1. p. 141. Kerse, MS. fol. 61.*