

No. 17. specially infest therein, and these being but duties to be paid for service to be done at the mill, to them who should grind their corns at the same, reason would crave, that they should not pay the duty which is only due for service, where they neither got, nor could get service ; for albeit the pursuer's infestment of thirlage might carry him to the multure of any corns thirled, which should be abstracted, yet the like reason was not for the foresaid duties, which were only payable for service, which service not being done, they alleged these should not be exacted. This was repelled, seeing the pursuer's right was of the thirle multures *cum eorum sequelis usitatis et consuetis* ; and that the pursuer offered to prove, that they were in use to pay these duties before, and seeing he had right to the multures abstracted, he had as good right to those duties used to be paid, seeing he behoved to keep servants at the mill for labouring of the corns when they came there, and these were the fees due to them.—In this process the Lords sustained the summons, bearing, That the defenders abstracted their multures, which were specificè libelled to extend to a special quantity libelled, and found it not necessary that the summons should bear, that the growth of the corns growing upon the ground extended to any particular quantity, and that the summons needed not bear the quantity of the corns which grew yearly, but that it was sufficient, that the summons bear the special quantity of the multures abstracted.

Act. *Mowat & Pitcairn.*

Alt. *Nicolson and Hay.*

Clerk, *Hay.*

Durie, p. 368.

* * * Auchinleck reports this case :

The knaveship and bannock found due to be paid, and may be pursued for *tanquam sequela multura*, where the payment thereof has been usual.

Auchinleck MS. p. 569.

* * * Formerly otherwise decided ; see No. 6. p. 15962.—See No. 384. p. 12512.

1628. June 27.

BLACKBURN against ———.

No. 18.

Found that a town's act of thirlage of *invecta et illata*, did not extend to corn only stacked within the town.

William Blackburn and the tenants feuers of Inverkeithing, pursued certain of their inhabitants for abstracting of their multures from their town mill, whereunto the hail burgesses of Inverkeithing were thirled by two acts, excerpt out of their town books, and subscribed by themselves ; which acts bore, That they thirled all the corns brought into the town by them ; and the defenders having taken some acres in labouring from Spencerfield, who astricted them to grind at his own mill all their corns growing upon his own land ; they raised a double pointing against him and the feuers, who pursued them likewise, and for the same multures of the same corns which grew upon Spencerfields lands, by reason the defenders used to bring in these corns, and stack them in their own yards in the town. The Lords

found that the act extended not to such corns that were only stacked in the town, and tholed not fire and water in the town.

No. 18.

Kerse MS. p. 455.

* * Spottiswood reports this case :

William Blackburn and the remanent feuers of the mills of Inverkeithing pursued certain of their own inhabitants for abstracting of their multures from the town mill, whereunto the whole burgesses of Inverkeithing were thirled by two acts extracted out of the town-books, and subscribed by the town-clerk ; which acts bore, that they thirled all their corns brought into the town by them. And the defenders having taken some acres of Spencerfield in labouring, who astricted them to ground at his own mill all their corns growing upon his land, they raised a double poinding against him and the feuers, who pursued them likewise for the multures of these same corns growing upon Spencerfield's land, by reason that the defenders used to bring in their corns, and stack them in their own yards in the town.—The Lords found that the act extended not to such corns that were only stacked in the town, and tholed not fire and water therein.

Spottiswood, p. 207.

* * The following is the same case with the above, under other names and date.

1628. *June 28.*

BROWN, Burgess in Inverkeithing, *against* The Town thereof.

In a double poinding by James Brown, burgess in Inverkeithing, against the Town of Inverkeithing, and L. Spencerfield, on the one and other parts, for the multures of certain corns growing upon some acres pertaining to Spencerfield heritably, and which were possessed by Brown, the suspender, and for which multures he was distressed by the said heritor as being due to him, being the corns growing on his own heritage, and which were thirled to his own mill, the said lands and mill being held of the King, and whereunto the Town of Inverkeithing could claim no interest ; and, on the other part, the Town acclaimed the multures of the said corns, because all their burgesses were thirled to their mill of Inverkeithing, and by an act of their Court, made by the Provost, Baillies, and Council, made with consent of the whole inhabitants of their burgh, not only were the corns growing upon the lands pertaining to the town thirled, but also all their burgesses were obliged thereby to grind and pay multure, for all their corns in-brought within the liberties of their burgh, wheresoever they grew ; and so the said suspender, being burgess of the town, and so by consequence tied by the foresaid act, being sworn to observe the acts and statutes of burgh, is holden to pay multures, and grind the corns questioned, at their mill, seeing they claim the same as being brought by the suspender within their liberties, the same being stacked within the town, and threshed out and dressed within his barn and houses.

No. 19.

Corns only stacked within a town found not comprehended under "*invecta et illata.*"