

1637. *March 21.* CUTHBERT *against* TOWN of INVERNESS.

One Cuthbert having from the Town of Inverness a feu of the mill of Inverness, "cum astrictis multuris granorum crescentium et omnium invectorum et illatorum," &c. which should thole fire and water within their territory; and it being questioned, if this astriction of corns in-brought, tholling fire and water, should extend to any corns but to those which the inhabitants of their town should happen to grind at any other mills than the mill of the astriction? for they alleged, that the astriction should receive, of law, reason, and justice, no other extension but to cause them bring all the corns which they should grind any where in the country to the mill libelled, to grind them at the same; and it were great iniquity, that if they should buy victual in the country, and bring the same within the territory of the town, that albeit they kilned and cobled the same, which is to thole fire and water, as if they should buy oats or bear, and kiln the one, and make the other in malt, which must be done by steeping in water, that they might not sell this again in the country unground, or transport the same out of the country, for other necessary commodities, but that they should be compelled to pay multures for such corn ground nowhere, which were to take away the liberty of buying and selling, common to all the lieges, and to take away the liberty of burgesses in burghs-royal, for *merces debetur pro opera*; and where no grinding is, no payment ought to be;—the Lords found, That this thirlage of in-brought corns, tholling fire and water, &c. ought to be interpreted of all corns which were kilned and cobled, albeit they should not be ground anywhere, but were sold in the country, and that all such corns were subject to the astriction, albeit they were nowhere ground at any other mill by the persons astricted; and this was the rather done, because the pursuer offered to prove, that the perpetual custom has been, that multures have been paid, by the whole inhabitants, for all such corns tholling fire and water, albeit they were never ground at any other mill; which custom the Lords sustained, being proved, to induce a necessity to do the same in all time coming. And sicklike, for the deductions, the Lords found, That no exception should be from the astriction, except teind and seed allenary, and that the farm bear paid by the tenant to the feuer of the land astricted, which feuer was vassal to the Town, who feued the mill to the pursuer and his author, ought not to be excepted from this astriction, nor yet the light corns given to the beasts which laboured the ground, nor the corns sold by the labourers of the ground for buying of cattle, and other necessaries for plenishing, or other necessities of the ground; all which were repelled, because the pursuer offered to prove, that the inhabitants have ever been in use to pay multures for all growing corns, without any deduction or defalcation at all of any particular, except allenary teind and seed, and no other exception; which the Lords sustained.

Act. *Advocatus, Nicolson, & Johnston.*

Alt. *Stuart & Gibson.*

Clerk, *Hay.*

*Durie, p. 840.*

No. 27.

Thirlage of corns which should thole fire and water, found to comprehend corns "kilned and cobled," though not requiring grinding.

General clause, "*cum astrictis multuris*," regulated by possession.