

1668. February 27. MAITLAND against LESLY.

No. 35.

Thirlage being constituted by infeftment, bearing multures and sequels, it was found, that the ordinary services to the mill dam and millstones were included in the infeftment.

In a concluded cause of abstracted multures betwixt Maitland and Lesly, the pursuer being infeft in the mill, with the multures and sequels, and having proved the astrictio of in-town multures, and witnesses being adduced concerning the services, for upholding the mill and dam, and bringing home millstones, who proved, that some of the lands were not in use of these services, but by two or three several acts, as once laying in the dam, at which the heritor was offended, and broke the tenants' heads, and twice going to help home the millstones, whether these lands were liable to the services;

Whereupon the Lords considered whether the constitution of a thirlage, with multures and sequels, did, by the nature of the right, give the ordinary mill-service, without relation to possession, so that, immediately after the constitution, these might be demanded:

Which the Lords decided *affirmative*, and then found, that these lands were liable to the service, unless they had, either by paction or prescription, attained freedom from the service, and found that the testimonies did not prove freedom for forty years, and that these acts were enough to interrupt, and so decerned for the ordinary services.

Stair, v. 1. p. 537.

1672. January 26.

CAMPBELL of Cruning against CAMPBELL of Keithick.

No. 36.

Knaveiship, &c. may be demanded in an action for abstracted multures. See Adamson, No. 17. p. 15965.

Cruning being charged upon a bond of thirlage granted by him for payment of the 22d curn of all grindable corns growing upon his lands thirled, did suspend upon these two reasons, *1mo*, That the bond not bearing *grana crescentia*, but only all corns grindable according to use and wont, could not be interpreted to comprehend any other corns but such as tholled fire and water, and not the duties paid by tenants; *2do*, He was not obliged to pay the 22d curn, but with deduction of the knaveiship and bannock paid to the millers, seeing the bond did bear the 22d curn to be the multure, only payable for grindable corns: Likeas, the suspender did offer to prove by the comuners and trysters betwixt both parties, that it was agreed that the bond charged upon should be no further obligatory.

It was answered, That the bond being conceived as said is was opponed, and the word grindable comprehending all corns growing upon the lands, the deposition of the comuners could not take away the same, and the meaning thereof was only proveable *scripto vel juramento*. As to the *second*, it was answered, That the quantity of the multure being the 22d curn, only could be understood of that which was payable to the feuer of the mill, but not what was payable to the servants as their dues.