No. 1.

Answered: The transaction 1750, cannot be proved by the books of the corporation, as nothing appears to have been marked in them for a number of years, before and after that period, although various transactions about letting their lands, &c. were agreed to by the corporation during that time; yet, there cannot be any doubt, as the deacon and majority of the corporation had signed it. As to importation of flour, it had been so trifling as to escape the notice of their miller, otherwise the dry multure would have been exacted from it, in terms of their obligation.

The Lord Ordinary had decerned in terms of the libel. The Court, upon advising a petition with answers, adhered to his judgment: But upon reconsidering the case in a reclaiming petition, with answers, they pronounced the following interlocutor, 19th June 1777, 'Find 1*mo*, That the defenders, the 'bakers of Cupar, are thirled and astricted to the common mills of Cupar, with 'all wheat and other grain brought by them within the liberties thereof, according to use and wont, and are liable to the accustomed insucken multures for 'the same, payable by others who are astricted to these mills; and, 2*do*, That 'the obligation in the year 1750, granted by the bakers of Cupar, is a valid 'and subsisting deed, binding on the granters and their successors, members 'of the incorporation of bakers of Cupar; and that in terms thereof, they are 'liable to the pursuers in payment of dry multure, for all flour imported by 'them or baken and vended within the said burgh, or liberties thereof. But 'assoilzie the defenders from the conclusion of the libel, respecting the payment of dry multure for oat meal brought by them within the burgh; and 'also in respect none of the other inhabitants of Cupar except the bakers are 'called as parties in this action, the Lords reserve all defences competent to 'them, against their being subjected in the conclusions of the pursuers libel, 'and with this explanation, and these variations, adhere to their former interlocutor reclaimed against, refuse the desire of the petition, and decern.

Lord Ordinary, *Elliock*. Act. *Ilay Campbell, E. M'Cormick*. Alt. *G. Wallace*. *D. Rae*.

D. C.

1807. *July* 1. EARL of FIFE *against* KING

No. 2.
Purchasing grain unground, and then getting it ground at a mill *without* the thirl, and bringing it in to be consumed *within*.

THE Earl of Fife is proprietor of the King's Mills of Elgin.

By a decree of the Court in 1766, it was found, 'That all corns and grain of 'whatever kind which shall be bought without the thirl, unground, by the inhabitants of the burgh of Elgin, or of the lands above specified, and inbrought 'by them to any part of the said burgh or lands, and converted to their own 'proper use, by brewing or baking, the same are astricted and thirled to the 'said mills.'

No. 2.
found to be an evasion of the servitude.

A process of abstracted multures before the Sheriff, was brought at the instance of Lord Fife and the tacksman of the mills, against Joseph King, merchant in Elgin, who contended, that he was not liable in multures for grain purchased by him in its unground state, and brought into the burgh after it had been ground at a mill without the thirl.

The Sheriff having assoilzied the defender, the cause was advocated, when the pursuer

Pleaded: The right of thirlage would be defeated altogether, if any person within the thirl were permitted to purchase grain without it, have it ground, and import it in that state, without paying multures. It is not merely upon such grain as is brought within the thirl to be manufactured, that the dues of thirlage are exigible; it is of no consequence whether it be ground within or without the thirl; in either way, the transaction is obviously entered into for the purpose of defrauding the thirlage; Ersk. B. 2. Tit. 9. § 25; Town of Musselburgh against Lord Tweeddale, 20th December 1743, No. 85. p. 16021. Magistrates against Bakers of Haddington, 19th June 1788, No. 121. p. 16071; Earl of Abercorn against Inhabitants of Paisley, 13th February 1798, No. 124. p. 16074.

Answered: It is only in the case of grain being bought without the thirl, and then imported, in order to be manufactured and consumed there, that multure is due. The decree in 1766 applies solely to 'grain unground' being bought without the thirl, and inbrought, and then converted to the use of the inhabitants; the commodity is still to be in the same state when it is 'in-'brought,' as when it was 'bought.' When meal is bought without the thirl, and imported in that state, multure is not due; Gray and Clerk against Raitt, 24th January 1749, No. 90. p. 16024. It makes little difference although the inhabitants first purchase the grain, and bargain with a miller to grind it before they import it.

The Court held, that effect must be given to this right of thirlage as long as it exists, and that if the argument of the defender was listened to, the right would be completely evaded.

Lord Ordinary, *Hermand.* Act. *Campbell.* Agent, *Jas. Laidlaw*, W. S.
Alt. *Monypenny.* Agent, *Mat. Montgomerie.* Clerk, *Pringle.*

F. *Fac. Coll. No.* 289. *p.* 660.

1808. *May* 17.

MAGISTRATES of FORFAR and ALEXANDER MALCOLM *against* WILLIAM POTTER.

No. 3.
A person bound by thirlage to

THE inhabitants of the royalty of the burgh of Forfar are, by a charter of novodamus of Charles II. and usage thereon, astricted to the wind and steel