

No 112.

1614. May 25.

MILL *against* FALCONAR.

IN an action of thirled multures pursued by Mr Andrew Mill *contra* Patrick Falconar, the Lords sustained the summons, founded upon a tack of the mill with thirled multures used and wont, in respect of acts of the court of the barony of Garvock, made by the bailies of the barony, whereby the tenants were convicted for abstracting of their multures; which act the Lords found sufficient, notwithstanding that the baron himself did not constitute the said thirlage; and sicklike, the Lords fand no action for abstracted bear by the miller, except the use were proven by witnesses.

*Item*, In the same cause, the Lords assoilzied for bygones, in respect of the infetment granted to Patrick Falconar by the Earl of Marshall *cum molendinis et multuris*, and that Mr Andrew Mill had intended no pursuit against him thereafter, *et fuit in bona fide* not to come to the mill.

*Fol. Dic. v. 2. p. 106. Kerse, MS. fol. 94.*

\* \* Haddington reports this case :

1614, May 24.—MR ANDREW MYLNE, tacksman of the mill of Garvock, being the Earl Marshall's barony of Garvock, pursued Patrick Falconer, brother to Halkerton, to pay him his abstracted multures of diverse years bygone, as also to pay him five pecks of entry bear, and ten pecks of water bear yearly. It was *excepted* by the defender, That the pursuer had no lawful title to pursue for thirlit multures, seeing he produced no thirlage, neither by lawful act of Court, nor other lawful title. It was *replied*, That he had tack of the mill, with the astricted multures set, more than 13 years since syne, by virtue whereof, he had been in possession of the thirle multures of the whole or most part of the barony. To this was *answered*, That the tack being temporal, could not asstrict the barony any longer than the tack lasted, which was expired. THE LORDS repelled the allegiance, because the tack was renewed, and the pursuer had a present tack. It was disputed, that the act of thirlage made in the baron-court by the Earl Marshall's bailie was not lawful to thirle his barony without the Earl's own presence, or express warrant. THE LORDS found it lawful, in respect of the possession following upon it. It was found, that no process could be granted for the entry bear, which was claimed as used to be paid at the entry of every tenant. THE LORDS sustained the summons for the water bear, because it was offered to be proved, that it was paid by each plough of the barony for their relief of upholding of the dam and mill houses, and services thereto.

*Haddington, MS. No 2569.*