

No. 19. within the town, and so falling under their act; for if Spencerfield claim any right thereto, as of corns growing on lands thirled to his own mill, the town has no interest therewith; but their own burgesses nevertheless must be personally astricted to pay them at least dry multure therefor; and so they contended, that the suspender would be obliged to pay twice multure for the said corns;—the Lords found, That the suspender was obliged to pay his multures to Spencerfield, and found, that the in-bringing, and setting of the corns within the suspender's yard, and threshing of the same within his barn, albeit he was then burgess, and that the barn and yard were within the said burgh, (seeing the acres whereupon the corns grew lay hard beside the town, and were nearest to the suspender's yard and house), was not such a cause as might subject him, in law, to pay multure for the said corn to the town, or to grind the same at their mill, and that the in-bringing of the said corns, as said is, would not make them to come under said act; which act they found not to extend to corns so in-brought.

Act. Baird.

Clerk, Gibson

*Durie, p. 378.*

\* \* Auchinleck reports this case :

The Town of Inverkeithing, by an act of Court, having astricted the whole inhabitants to grind their whole corns growing upon the lands of the town labour- ed by them, and whole corns that shall be brought or in-brought by the said inhabitants, at the common mill of the said burgh, the farmers of the said mill pursue some of the inhabitants who laboured some of the Laird of Spencerfield's lands, and led the same, and stacked in within the town, for their astricted multures. The tenants raise a double poinding, alleging the said corns were thirled of Spencerfield's mill, and they would not pay double multure. The Lords ordained Spencerfield to be answered and obeyed of the multures which grew upon his own lands, and found, that the act of astriction could not be extended to corns that grew upon other men's lands, which were laboured by the inhabi- tants, and were only in-brought into the town to be stacked, they having no other place to set and stack them than upon the land where they grew.

*Auchinleck MS. p. 128.*

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1629. July 17. LAIRD OF NEWLISTON *against* INGLIS.

No. 20.  
The services  
of leading  
millstones, re-  
pairing the  
dam, and  
other services

The young man of Newliston, feuer of the mill of ———, holden of the Lord Torphichen, pursues Alexander Inglis of Rottourlaw for the abstracted multures of Rottourlaw. It is alleged by the defender, that he and his authors are infest by the Lord Torphichen in the lands of Rottourlaw in feu, for payment of a certain-feu-duty *pro omni alio onere*, long before the pursuer or his authors

feued the said mill, and so after the Lord Torphichen had let the lands of Rot-tourlaw, without any astriction to the said mill, his Lordship could not astrict them by a sequent feuing of the said mill. To which it was replied, That the exception is not relevant, except the excipient would allege that he or his authors were infest *cum molendinis et multuris*, in respect it was the mill of the whole barony whereto the said lands were astricted before the feu. The Lords repelled the exception, in respect of the reply.

*Auchinleck MS. p. 129.*

\* \* See Durie's report of this case, No. 115. p. 10852. *voce* PRESCRIPTION, from which the proposition on the margin is taken; from which likewise it is to be understood, that a feu charter bearing a certain feu-duty *cum omnio alio onere*, without a clause *cum molendinis*, imports not exemption from thirlage.

1629. July 17.

A. against B.

If the tenants abstract corns from the mill whereunto they are thirled, and, when they are pursued for abstracted multures, they offer them to prove that they offered their corns to the mill, and that the mill wanted water; if it be replied, that notwithstanding they made offer of a part of the corns of a certain time of drought, yet, before the time, they abstracted the corns, and ground them at other mills, the exception should be repelled, in respect of the reply.

*Auchinleck MS. p. 129.*

1631. November 26. MR. WILLIAM OLIPHANT against EARL MARISHAL.

The Earl granting bond to Mr. William, obliging him to infest him in some oxen-gates of his lands, of the barony of Strabrock, and to subscribe a charter of feu-holding, for a certain duty therein mentioned, to be paid therefor allenary, which was also under reversion; and the Earl being charged to give him such a feu-charter, and suspending, upon production of a feu-charter, bearing, "payment of the feu-duty convened on, nomine feudifirmæ tantum pro omni alio onere, demanda, vel servitio, quod de dictis terris exigi poterit;" the Lords found, That this charter satisfied not the tenor of the bond, because the charter bore not a clause therein, *cum molendinis et multuris*, whereby, if the same had been inserted, the receiver might be free of all astriction and thirlage of the lands disposed to the mill of that barony whereof the said lands disposed were a part; for the Lords found, that the bond being of this tenor, obliging the maker thereof to dispose the lands in feu, to be holden of him for payment of a feu-duty allenary, albeit the bond bore no more, neither made mention of mill nor multures; but only proported "the payment of the foresaid feu-duty therefor allenary," ought

No. 20.  
about the mill, are implied in every sort of thirlage, and go along to purchasers, tho' not expressed.

No. 21.

No. 22.  
A feu-charter bearing a certain feu-duty *pro omnia alio onere*, but with no clause *cum molendinis et multuris*, imports no exemption from thirlage. See Newliston; No. 20. *supra*.