

1632. July 13. EARL of MORTON *against* TENANTS of Muckartshire.

No 116.

THE Earl of Morton pursued the Tenants of Muckartshire, for abstracted multures from his mill of Muckart, whereunto he was seised 1546, by the Archbishop of St Andrews, *cum astrictis multuris usitatis et consuetis*. *Alleged*, His sasine gave him no interest, unless he would show, that the defender's lands libelled were astricted before the granting of the said infeftment. *Replied*, It being the mill of a barony, did import, that the whole lands within the barony were astricted thereunto. Likeas, he offered to prove, that ever since, the whole barony was in use to come to the said mill. *Duplied*, *Usus et possessio ad inducendam astrictionem non sufficit*. THE LORDS sustained the exception.

Fol. Dic. v. 2. p. 106. Spottiswood, (MILLS and MULTURES.) p. 209.

* * Durie reports this case :

THE Earl, and one Crawford his tacksman concurring, being infeft in the mill of Muckart, with the astricted multures used and wont, by the bishop of St Andrews' (this mill being the only mill of the barony) pursues the feuars of the lands of this barony, every one for their own lands, for abstracting of the multures, and to pay the same to his tacksman of the said mill; wherein the LORDS found, that the Earl's charter and sasine foresaid, containing disposition of the mill, (being the only mill of the barony) with the astricted multures, used and wont, and the continual use of the defenders' coming and grinding their corns of their lands at the said mill, was not a sufficient ground or title whereby the defenders might be compelled to come to the said mill, and grind their corns thereat, as thirled and astricted thereto; for, by that infeftment, they were found not to be thirled, which was granted to the pursuer, bearing *ut supra*, nor yet by their use to come and grind their corns at the said mill, how long soever they had so done, except that the pursuer would reply, and prove express astriction of these lands, pertaining to the defenders, to this mill, either by their evidents, bearing them to be thirled thereto, or by some lawful acts of Court, and constitutions, whereby the saids lands and possessions thereof were so thirled before the defender's infeftment, and no otherwise.

Act. Nicolson & Dunlop. Alt. Stuart & Primrose. Clerk, Hay.

Durie, p. 646.

1635. February 5.

DOG *against* MUSHET.

ONE Dog pursuing Mushet, for abstracting of his corns, growing upon his lands of ———, which lands are of the Lordship of Cessintullie, in the mill of the which Lordship the pursuer is infeft, with the astricted and thirled mul-

No 117.

A party was infeft in a mill, the only mill of the barony, with