No. 22. to import freedom and liberation of the feuer from all thirlage of these lands to that mill of the barony, either already made before the bond, or to be made any time after the same; and that that word "allenarly" ought to produce that effect; and therefore that the charter ought to be made with that clause foresaid, which may import the same: Neither was it respected what the suspender alleged, that this charter was conform to the bond in every point, and that it was not now time to dispute what that clause anent the payment of the feu-duty only appointed to be paid should import; for, seeing the charter bore that clause, it was free to him to claim the extent and effect of that clause, when any question should arise upon any deed contrary or different therefrom, which at this time was not proper to be agitated; notwithstanding whereof, the Lords found, that he ought to have liberation from all thirlage, and that the charter ought to bear a disposition of the lands cum molendinis et multuris, albeit the bond bore nothing of thirlage, mills, nor multures, but only that word, "allenarly," as said is.

Act. *Præsens.* Alt. *Nicolson.* Clerk, *Hay.*

*Durie, p.* 603.

*** See Monteith, 4th December, 1716, *infra, h. t.*

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

No. 23.

Infeftment in a mill *cum astrictis multuris usetat. et consuet.* though the mill was the only one of the barony, was found not sufficient to infer astriction against the tenants of the barony, as the terms *usitat. et consuet.* were relative, and regulated by the practice prior to the infeftment.

*Durie. Spottiswood.*

*** This case is No. 116. p. 10853. *voce* PRESCRIPTION.

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No. 24.

The clause "*cum molendinis et multuris,*" in the *tenendas* of a charter, with a feu-duty *pro omnio alio onere,* found, in certain circumstances, not to liberate from astriction.

1632. *November* 20.

SIR ALEXANDER HAMILTON *against* MATTHEW HAMILTON.

By contract passed betwixt the umquhile Laird of Innerwick and umquhile Alexander Hamilton of Easterneith, *anno* 1572, the Laird is obliged to give a feu infeftment of the said land to the said Alexander, who, by his bond, is obliged that he, being infeft, shall bring his corns to the mill of Botehaitt, and pay such a multure thereof. Sir Alexander Hamilton, son and heir to the Laird of Innerwick, contracter, pursues Matthew Hamilton, son to the said Alexander of Easterneith, for his abstracted multures. It is excepted, that he is infeft by the pursuer in the said lands *cum molendinis et multuris,* without any relation to the said contract,

whereby he is made free from any restriction proceeding by virtue of the said contract. To which it was replied, That seeing the Laird of Innerwick was bound by the said contract to infeft him in the said lands, with the condition of coming to his mill, the posterior infeftment must be ruled by the said contract; except the defender allege that he or his father had got another infeftment for fulfilling of the contract, from the Laird of Innerwick, than this whereupon he founded this exception; but if there was no other, but this was the first granted after the said contract, it must be ruled by the said contract; and the general clause *cum molendinis* inserted cannot annul the special restriction contained in the said contract, except the said thirl had been discharged *per expressum*. Which reply the Lords found relevant. No. 24.

*Auchinleck MS. p.* 130.

*** Durie's report of this case is No. 65. p. 10768. *voce* PRESCRIPTION.

1635. *June* 26. WAUCHTON *against* HOME.

No. 25.
Thirlage of *omnia grana crescentia.*

The Laird of Wauchton pursued George Home of Ford for the abstracted multures of his lands from the pursuer's mill of Linton, whereunto the defender's lands were astricted by a charter given by the Lord Holy-rood-house to William Lermonth of the Hill, author to the pursuer. The charter bore, that the Lord Holy-rood-house astricted to the said mill *terras suas de Ford, &c. decimum sextum granum.* Alleged, The astriction could be extended only to the sixteenth quern of such corns as were brought to the mill, and grinded thereat; but not to all the corns growing on the ground, as the pursuer craved by his summons; 1*mo*, Because the first contract of all thirlages was only to make the vassals bring to their master's mill such corns as they were to grind for their own use, and not to carry it elsewhere; and it were against reason to make them pay multure for corns they had no necessity to grind; 2*do*, This astriction, being in general terms, should not be extended further than to corns brought to the mill, all astrictions being odious; and therefore, except a man oblige himself expressly to pay multure for all corns, as well ungrinded as grinded, he cannot be subject thereunto by any general clause of thirlage. The Lords found these words, "*terras suas*," to be equivalent to *segetes crescentes super terris suis*, so that all corns growing were comprehended therein; but declared that they would consider the particulars, what corns should pay multure, and what not; if any further than teind and seed, which are excepted in all thirlages, should be free in this case, where the astriction was general.

*Spottiswood, p.* 209.

*** Durie's report of this case is No. 408. p. 11230. *voce* PRESCRIPTION.