

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 infest him in the said lands, with the condition of coming to his mill, the posterior infestment must be ruled by the said contract; except the defender allege that he or his father had got another infestment 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.

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 Lermouth 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; *1mo*, 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; *2do*, 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.

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

*Spottiswood, p. 209.*

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