

1675. *January 28.* ALEXANDER HOME OF LINTHILL *against* SIR LAWRENCE SCOTT.

LINTHILL, as having right, by progress, to the Mill of Eymouth, with the astricted multures, from William Home of Lochtilloch, who had a feu of the said mill from the abbots of Coldinghame *in anno* 1535, did pursue the tenants of Eymouth, belonging to Sir Lawrence Scott, for abstracted multures.

It was ALLEGED for Sir Lawrence, That his lands were disponed to him by the Laird of Wedderburn, and were a part of the barony of Wedderburn, wherein his predecessors were infest *cum molendinis et multuris*, and did build a mill upon his lands, now belonging to the defender; and the tenants have been in use of grinding their corns at the said mill these forty years bygone, without interruption; whereby they had acquired a right and immunity in law, by prescription.

It was REPLIED, That the pursuer not only had the undoubted right by infestment, but likewise had several acts of court, and a decreet of the Lords of Session, against the tenants of Eymouth; conform whereunto he offered him to prove that the tenants were in use to come to the mill within these forty years.

It was REPLIED, That these acts of court were only made by the pursuer's authors themselves, or others who were thirled to their mill; and, for the decreets of the Lords, it was not against the Laird of Wedderburn, nor he called, and so he could not be prejudged thereby.

The Lords did find, That Sir Lawrence, his right flowing from the Laird of Wedderburn, could not be prejudged by any acts or decreets whereto he was not called, and that his tenants, going to Linthill's mill voluntarily, could not wrong him; and so admitted to his probation, that Wedderburn and his tenants have been these forty years in possession of going to his own mill without interruption.

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1675. *February 9.* MR LEWIS DUNLOP, Minister at SKEIN, *against* The HERITORS of that Parish.

THE minister at Skein pursues the heritors of that parish for the stipends of the said kirk, conform to a decreet of locality obtained *in anno* 1647, as being presented by Mr James Weyms, Dean of St Andrew's, and parson of Kinkell, who was patron of the said kirk of Skein.

It was ALLEGED for the heritors, That they could not be liable; because, if that decreet of locality were produced, it would appear that it was given when bishops and deans were suppressed; but now, being restored, and the Dean having right, gotten payment of the tack-duty of the parsonage teinds, whereof they being made free by the decreet of locality, they cannot be now decerned to pay both the tack-duty to the Dean, and the augmentation to the minister.

It was REPLIED, That it was offered to be proven that the heritors had been in use of payment of the local teinds, and that he had *decennalis et triennalis possessio*, which was a sufficient title, without producing a decreet of locality; which the defenders ought to produce, if they founded thereupon.