

No. 43. The Lords ordained the matter of fact to be tried before answer to this point. Thereafter the pursuer alleged, That the defender's feu had fallen by the forfeiture of his superior my Lord Argyle, to the Marquis of Huntly the donatar, who had confirmed the pursuer's feu of the mill *in anno* 1676.

Answered for the defender : That he had also a confirmation of his lands of Stroan, with a *novodamus* from the said donatar, prior to the confirmation of the pursuer's right of the mill.

Replied for the pursuer : Before the confirmation in favours of the defender, the Marquis promised by a letter to confirm the pursuer's feu of the mill, containing the multures of the lands of Stroan, which promise was equivalent to a disposition of these multures, which then stood in the Marquis' person by the gift of forfeiture.

The Lords found, That the posterior confirmation to the pursuer, though with a *novodamus*, did only extend to the feu of the mill as the pursuer had right thereto ; and that the antecedent promise was not equivalent to a disposition, nor a *modus habilis* to convey the multures of the defender's lands, though the right of them was then in the Marquis' person.

*Harcarse, No. 721. p. 203.*

1682. January 17. MAJOR BUNTIN *against* ROBERT BOYD.

No. 44.

Found that a prior feu of lands, for a duty *pro omni alio onere cum molendinis* in the *tenendas*, (for these words are never put in the dispositive clause, except where a mill is already dispoed) liberates from astriction, although the pursuer had the mill dispoed after the feu of the lands, with the thirle multures of these lands *per expressum* ; and since the feu the heritor and his tenants were in use to grind at the pursuer's mill, because that was *meræ facultatis*, so long as there was no compulsitor, or sentence for abstracted multures.

*Harcarse, No. 722. p. 204.*

1682. March. DUFF of BRACO *against* ABSTRACTERS.

No. 45.

Found that seed and horse corn pay no dry multure ; but that threshing lot is not free (more than hynd's bolls) though it be not grinded at the master's mill ; and found, That when teind is not drawn or paid *in ipsis corporibus* to the titular or tacksman, but in money, it should be liable to multure as the stock.

*Harcarse, No. 723. p. 204.*